Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of the Consultative	:	
Report of the Application of	:	
Verizon New Jersey, Inc. for FCC	:	Docket No. TO01090541
Authorization to Provide In-Region,	:	CC Docket No. 01-347
InterLATA Service in New Jersey	:	

CONSULTATIVE REPORT OF THE
NEW JERSEY BOARD OF PUBLIC UTILITIES

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BY THE BOARD:

EXECUTIVE SUMMARY

The New Jersey Board of Public Utilities ("Board") recommends that the Federal Communications Commission ("FCC") grant to Verizon New Jersey Inc. ("Verizon NJ") authority to provide in-region, interLATA services in New Jersey. After a thorough and comprehensive investigation of Verizon NJ's compliance with the statutory requirements enumerated in section 271 (c) of the federal Telecommunications Act of 1996[1] ("the Act" or "TA-96"), the Board finds that, with the conditions described herein, Verizon NJ has taken the requisite steps to open its local exchange and exchange access markets in New Jersey to competition.

The Board has long been involved in implementing the section 271 statutory requirements to ensure Verizon NJ's compliance. In the recommendation that follows, the Board provides a detailed analysis supporting Verizon NJ's section 271 checklist compliance based on the totality of evidence presented in the Board's 271 proceeding and the conditions articulated herein by this Board. The Board advises the FCC that Verizon NJ, with the Board's conditions, has met its obligations under the Act. Specifically, Verizon NJ has met its section 271 (c)(1)(A) obligation by entering into some 200 interconnection agreements with competitive local exchange carriers approved by the Board pursuant to section 252 of the Act to provide access and interconnection with Verizon NJ's local phone network. In addition, the Board's records shows that more than 100 CLECs have been authorized to provide local exchange service to either or both residential and business customers in New Jersey using their own facilities and those of Verizon NJ. CLECs serve customers in Verizon NJ's territory through more than 184,500 resold access lines, more than 16,700 UNE-P lines, and about 312,600 facilities-based lines. The record shows that Verizon NJ is meeting its legal obligation to provide each of the14 checklist items of section 271 (c) (2)(B) under the aforementioned approved interconnection agreements.

There has been a comprehensive review of Verizon NJ's operations support systems ("OSS") to verify that Verizon is meeting its obligation to provide these checklist items. A test of Verizon NJ's OSS was conducted by a third-party evaluator, KPMG Consulting, acting under the direct supervision of the Board. KPMG Consulting's task was to analyze and to verify Verizon NJ's performance in three test families; (1) transaction validation and verification, (2) policies and procedures review, and (3) performance metrics reporting. The test covered 536 individual test points across five test domains (pre-ordering, ordering and provisioning; maintenance and repair; billing; relationship management and infrastructure; and performance metrics) required by Section 271. KPMG Consulting's review within each domain was conducted through both an evaluation of Verizon NJ's existing policies and procedures and KPMG Consulting's creation of a "pseudo-CLEC" doing business in New Jersey.

In May 2000, the Board adopted the New Jersey Carrier-to-Carrier Guidelines which provide a comprehensive set of performance measurements, standards and reports applicable to wholesale service provided by Verizon NJ. The performance measures in the Guidelines cover the areas of Pre-Ordering; Ordering: Provisioning; Maintenance and Repair; Network Performance; Billing, Operator reports, poles, ducts, conduits and rights-of-way. Performance

1 P.L. 104-104, 110 STAT. 56(Codified in scattered sections of 47 U.S.C. §§151 et seq.

standards have been set for many of these measurements. For some metrics, wholesale performance is compared to the service Verizon NJ provides to its Retail customers to determine whether service is provided "at parity." For other metrics, this Board has established a benchmark standard. Verizon NJ provides its wholesale performance results to the Board and the CLECs on a monthly basis in Carrier-to-Carrier Reports. In October, 2001 the metrics were modified with the addition of several advanced services metrics, which were the result of a collaborative agreement between Board Staff, Verizon NJ and several CLECs.[2]

On October 12, 2001, the Board approved a new Incentive Plan or "IP". The IP is a necessary component for stimulating competition, because it ensures that Verizon will treat CLECs and their customers as well as it treats itself and its own customers. The metrics adopted by this Board, and the penalties that will be assessed for failure to meet those metrics through the IP, are intended to ensure that Verizon gives a high level of service to its competitors and to prevent backsliding should the company receive FCC approval to provide long distance service.[3]

The Board has also approved a collocation stipulation that will provide CLECs an assurance of reasonable terms and conditions by which they can install their interconnection equipment in Verizon's central offices. The stipulation, which is the result of negotiations between the parties is another important step in the process of stimulating competition.[4]

The Board has also recently set new unbundled network element rates that will ensure that CLECs can lease portions of the Verizon network at prices that will enable them to enter the market. In the November 20, 2001 Decision, which became effective on December 17, 2001, the Board reduced the rates of the components of the UNE-Platform by over 40%, answering the complaints from CLECs that New Jersey UNE rates were a bar to entry into the State. We now have the lowest rates in the region and are among the lowest in the country.[5]

Having taken these actions to remove any potential barriers to entry, and having concluded its review of Verizon NJ's 271 application to the Board, we have concluded that, with the conditions articulated herein by this Board, the New Jersey local telephone markets are irreversibly open to competition. Therefore, the Board recommends that the FCC grant Verizon NJ section 271 authority to offer in-region, long distance telephone service in New Jersey.

I. PROCEDURAL HISTORY AND RELATED PROCEEDINGS

New Jersey 271 Application

On September 5, 2001, Verizon NJ filed information with the Board in support of its asserted compliance with the requirements of Section 271 of the Act. According to Verizon, the information in the filing would allow the Board to review Verizon's compliance with the Act's 14-

2 See Order Approving Revised Guideline's, I/M/O the Investigation Regarding Local Exchange Competition for Telecommunications Services, Dkt. Nos. TX95120631 and TX98010010 (November 9, 2001) ("Guidelines Order")

3 See Order Approving Incentive Plan, I/M/O The Investigation Regarding Local Exchange Competition for Telecommunications Service, BPU Dkt. Nos. TX95120631 and TX98010010 (January 10, 2002). ("IP Order").

4 See I/M/O filing of AT&T Communications of NJ, L.P., WorldCom, Sprint Communications Company, L.P., United Telephone Company of New Jersey, and Verizon New Jersey, Inc. for Approval of a Revision to Tariff B.P.U.-N.J-No. 4., as Listed in the Appendix, Providing for Revisions to CLEC Collocated Interconnection Service, BPU Dkt. No. T101040215.

5 See Summary Order of Approval, I/M/O The Board's Review of Unbundled Network Elements, Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc.. Dkt. No. TO00060356 (December 17, 2001).

point competitive checklist set forth in Section 271 (c)(2)(B) and verify its compliance to the FCC when Verizon seeks approval from the FCC to provide long distance services in New Jersey. In accordance with the Procedural Order adopted at the September 26, 2001 Board Meeting, as subsequently modified, the Board examined Verizon NJ's filing, received comments in response, supervised an extensive discovery process, held two days of extensive technical discussions with KPMG and seven days of hearings, and then received and reviewed extensive briefs and reply briefs from the parties.

After a thorough and comprehensive investigation of Verizon NJ's compliance with the statutory requirements enumerated in Section 271(c) of the Act, the Board, with the inclusion of our conditions, finds that Verizon NJ has demonstrated its compliance. These findings are the culmination of significant effort by the Board, its staff, KPMG, acting under the direct supervision of the Board, Verizon NJ, and many interested parties to ensure strict and full compliance with each of the 14-point Checklist items listed in Section 271(c).

Unbundled Network Elements

The Board originally set rates for various unbundled network elements in its Decision and Order in I/M/O Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631
(December 2, 1997) ("*Generic Order")*. On June 1, 2000, consistent with its determination in the Generic Order that it would regularly monitor Verizon NJ's UNE rates, the Board announced that it would commence a proceeding (Docket No. TO00060356) to review UNE rates. Additionally, on June 2, 2000, the United States District Court for the District of New Jersey issued a Decision, affirming in part, reversing in part and remanding in part the Generic Order [6] ("Remand Order"). The Board incorporated the review of issues remanded by the District Court, as well as FCC orders issued since 1997, into its previously announced UNE review proceeding (the "UNE Proceeding"). That proceeding covered the entire array of unbundled network element rates.

At its November 20, 2001 Agenda Meeting, the Board concluded the UNE Proceeding by determining rates for certain recurring and non-recurring elements, and adopting inputs and assumptions for all other rate elements. In a Secretary's letter, the Board directed Verizon NJ to rerun certain models to reflect those Board established inputs and assumptions.[7] In response to the Secretary's Letter, Verizon NJ reran its models, and reported the results of those reruns in filings with the Board on December 3 and December 10, 2001. The Board issued its Order memorializing the November 20, 2001 UNE Decision adopting the rates on December 17, 2001.[8]

Collocation

The rates and charges that apply to the multiple collocation offerings and alternatives available to CLECs in New Jersey are set forth in Verizon NJ's Tariff B.P.U.-NJ. No. 4. Verizon NJ initially introduced the Collocated Interconnection Service on April 4, 1997. On December 2,

6 See AT&T Communications of New Jersey, Inc., et al. v. Bell Atlantic-New Jersey, Inc., et al., Civ. No 97-5762 (KSH), and MCI Telecommunications, Corp., et al., v. Bell Atlantic-New Jersey, Inc., et al., Civ. No. 98-0109 (KSH) (D.C.N.J. June 6, 2000).

7 See Nov. 20, 2001 Secretary's Letter to Verizon NJ I/M/O the Board's Review of Unbundled Network Elements, Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Dkt. No. TO00060356.

8 See Summary Order.

1997, the Board adopted certain collocation provisioning requirements in its Local Competition Generic Order in Docket No. TX95120631. Verizon NJ filed with the Board revisions to its Collocation Interconnection Service Tariff on May 28, 1999, October 13, 1999, May 17, 2000 and June 30, 2001.

On April 4, 2001, Verizon NJ and several CLECs filed a Joint Petition and Settlement Agreement with the Board (BPU Dkt. No. TT01040215), settling all rates pertaining to physical and virtual collocation, as well as key terms and conditions contained in Verizon NJ's Tariff B.P.U. – N.J.-No. 4, and requesting a retroactive effective date of January 1, 2001 for certain terms.

Seeking to comply with the FCC's recent Collocation Remand Order (FCC's Fourth Order and Report, I/M/O Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, (August 8, 2001), on September 29, 2001, Verizon NJ filed amendments to both its federal collocation tariff and its New Jersey collocation tariff.

At its December 19, 2001 agenda meeting, the Board granted Joint Petitioners' April 4, 2001 request for approval of a Stipulation of Settlement and proposed revisions to Verizon NJ's collocation tariff without modification. The Board also established a thirty-day response period for comment on issues not resolved by the settlement.

Metrics

By Order dated July 13, 2000, and following an extensive series of collaborative meetings with the telecommunications industry and the RPA, the Board first approved the Carrier-to-Carrier Guidelines, as then proposed by Staff. By letter dated May 30, 2001, Staff distributed proposed updates to these Guidelines to incorporate the inclusion of Advanced Services and various other modifications. In this letter, Staff requested that formal comments be filed with the Board. On July 3, 2001, Staff and the commenting parties, WorldCom, AT&T and Verizon NJ, conducted a conference to discuss their various concerns.

On October 12, 2001, the Board approved revised Carrier-to-Carrier Guidelines that included, among other things, adoption of consensus metrics (e.g., DSL and line-sharing metrics) that were developed in the New York Carrier-to-Carrier Working Group and approved by the New York Public Service Commission. Carrier-to-Carrier Guidelines ("Guidelines") are designed to measure and monitor Verizon's performance. Consequently, Verizon NJ is subject to extensive performance reporting requirements that, like the comparable requirements in New York, Massachusetts, Connecticut, and Pennsylvania, allow competitors and regulators alike to identify and investigate potential problems before they pose a risk to competition.

Performance Incentive Plan

In addition to the Guidelines, a Board Decision on October 12, 2001 established an incentive plan, with self-executing remedies, in the form of bill credits and payments that provides Verizon NJ with a substantial financial incentive to continue to meet its performance obligations.[9] The payments provided by the IP increase with the severity and duration of a "miss," and the number of CLEC units affected. There is no cap on Verizon NJ's liability under the approved IP.

9 See IP Order, supra.

The Guidelines and the IP are the product of months of collaborative work by the Board, Staff and the parties. To assure that performance metrics and the IP remain current with industry developments, the Board will monitor the need for revisions and can refer any proposed modifications to the Technical Solutions Facilitations Team (TSFT), the Board's Staff/Industry collaborative working group, for resolution.

II. VERIZON NJ COMPLIANCE WITH SECTION 271(C)(1)(A) -- PRESENCE OF FACILITIES-BASED COMPETITION

Description of Issue

In order for the Board to approve a Bell Operating Company ("BOC") application to provide in-region, interLATA services, a BOC must first demonstrate that it satisfies the requirements of either Section 271(c)(1)(A) (Track A) or 271(c)(1)(B)(Track B). To qualify for Track A, a BOC must have interconnection agreements with one or more competing providers of "telephone exchange service . . . to residential and business subscribers." 47 U.S.C. § 271(c)(1)(A). The Act further states that "such telephone service may be offered . . . either exclusively over [the competitor's] own telephone exchange service facilities or predominantly over [the competitor's] own telephone exchange facilities in combination with the resale of the telecommunications services of another carrier." Ibid.

Standard of Review

In Memorandum Opinion and Order, In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, CC Docket 97-137, FCC 97-298 (August 19, 1997), at ¶ 85 ("Ameritech Michigan 271 Order"), the FCC concluded that when a BOC relies upon more than one competing provider, section 271(c)(1)(A) does not require each carrier to provide service to both residential and business subscribers.[10]

C. Summary of Evidence before the Board

Verizon NJ stated that competition in the local telephone market is irreversibly open and continues to grow.[11] As of June 30, 2001, Verizon NJ claimed that there are more than 160 approved interconnection agreements, and approximately 50 pending approval with this Board. These include approximately 90 full facilities-based agreements with CLECs, more than 105 agreements for resale only, and approximately 15 agreements with wireless providers.[12] Also, as of June 30, 2001, approximately 95 CLECs have been authorized by this Board to provide local exchange service in New Jersey. Numerous additional CLECs have filed Letters of Acknowledgement indicating their intent to resell local services in New Jersey.[13]

10 See also Memorandum Opinion and Order, In the Matter of Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for the Provision of In-Region, InterLATA Services in Louisiana, CC Docket No. 98-121, FCC 98-271 (October 13, 1998)., at ¶¶ 46-48 ("Second BellSouth Louisiana 271 Order").

11 VNJ Bone Declaration at ¶ 4. and Attachment 101.

12 Id. at ¶ 6 .

13 Id. at ¶ 5.

In regard to CLECs' market activity, as of June 2001, Verizon NJ stated that there were approximately 100 active CLECs in its service territory. According to Verizon NJ, indicators of CLEC activity include the purchase of UNEs, resold lines, and interconnection trunks; facilities-based listings in E911 database or directories; and ported telephone numbers.[14]

Verizon NJ stated that CLECs are serving both residential and business customers. Verizon NJ specifically listed 9 CLECs that collectively are providing facilities-based local exchange service to residential and business customers. These CLECs include Allegiance, AT&T, ARC Networks, Inc. (d/b/a InfoHighway Communications Corporation), Essex Communications (d/b/a eLEC Communications Corp.), Focal, MCI WorldCom, MetTel, PaeTec, and XO Communications.[15]

As of June 30, 2001, Verizon NJ indicated that there are a total of more than 184,000 resold access lines that are served by CLECs, of which approximately 32% are residential lines. Verizon NJ stated that CLECs are providing service via all three modes of competitive entry, and competition is disbursed throughout the state, i.e., in all area codes within Verizon NJ's territory.[16]

Moreover, Verizon NJ stated that, as of August 2001, in addition to 184,000 resold customer access lines, there are 17,000 UNE-P lines and, per E911 listings, there are 313,000 facilities-based lines in New Jersey that are provided by CLECs. Verizon NJ asserted that CLECs have captured over 7% of the total lines in Verizon NJ's territory and that, based on the growth of total CLEC lines from June 30 to August 31, 2001, CLEC growth is continuing at a strong pace, at about 40 percent per year.[17]

Several parties, including AT&T, WorldCom, Cablevision Lightpath and the Ratepayer Advocate, challenged Verizon NJ's satisfaction of this Act's requirement based on the number of facilities-based customers served by CLECs. These carriers argued that until there is a larger amount of facilities-based local competition, the New Jersey local market cannot be declared open.

The New Jersey Division of the Ratepayer Advocate ("Advocate") stated that Verizon's burden to meet the section 271(c)(1)(A) requirement is fourfold: (1) Verizon must demonstrate that CLECs offer residential local service over their own facilities (excluding via resale), (2) that the number of local residential customers served over CLEC facilities constitute more that a de minimis number, (3) that such service is currently being provided as an "actual" rather than a theoretical future "commercial alternative," and (4) that to be considered local residential customers served on a commercial basis over CLEC facilities, the local residential customers must be persons receiving the service for a fee rather than employees of the CLECs or test lines.[18] The Advocate argued that Verizon fails on all four points and therefore cannot meet the section 271(c)(1)(A) requirement. Specifically, the Advocate stated the following:

(1) Verizon NJ has not provided sufficient evidence upon which this Board can determine that any CLEC offers facilities based local residential service in New Jersey;

14 VNJ Bone Declaration, Attachment 101.

15 VNJ Bone Declaration at 4-9.

16 VNJ Bone Declaration, Attachment 101, Tables 1 and 2.

17 VNJ Reply Declaration, of Bone, Taylor, and West at ¶4 and Tables 2 and 3.

18 Advocate Brief at 22.

(2) Verizon NJ failed to provide evidence that its 680 supposed facilities-based CLEC local residential lines constitute a more than a de minimis amount required to meet section 271(c)(1)(A);

(3) since Verizon NJ must prove that CLECs are currently actually providing local residential services over their own facilities, its evidence regarding existing collocation arrangements, sunk investments, and the alleged ability of CLECs to enter into the local market in the future is irrelevant in determining Verizon NJ's compliance with section 271(c)(1)(A); and

(4) Verizon NJ failed to provide any evidence that even a single one of its supposed 680 facilities based CLEC local residential lines are provided by CLECs on a commercial basis for a fee.[19]

In reply, Verizon NJ argued that Track A is satisfied, since there are actual commercial alternatives to Verizon NJ in the New Jersey local exchange service marketplace. According to Verizon NJ, parties that oppose Verizon NJ's entry into the long distance market propose different standards than the one set out by the Act and explicated by the FCC.[20]

Verizon NJ argued the following to refute the Parties positions:

(1) the FCC has repeatedly refused to adopt a "market share" test for purposes of Track A compliance. Track A requires "a demonstration of a *competitor* in the local exchange market. But Track A does not require a showing that there are multiple competitors in the local market, nor does it require a showing that competitors have captured a certain percentage of local lines.[21]

(2) Section 271(c)(1)(A) does not require a showing that a specific percentage of the local market is being served by facilities-based competition.[22]

(3) Section 271(c)(1)(A) does not require a showing that a specific percentage of the facilities-based lines being served by CLECs are residential lines, as some parties have suggested.[23]

(4) Verizon NJ does not have to demonstrate a specific level of competition throughout the state, and the RPA's contention to the contrary – that "[a] showing of residential competition in each geographic area of the state is a necessary prerequisite" for section 271 relief is false.[24]

D. Analysis of Evidence

19 Id. at 22-24.

20 Verizon NJ Reply Brief at 3, 61.

21 Verizon NJ Brief at 56-57; Verizon NJ Reply Brief at 61-62.

22 Verizon NJ Reply Brief at 62-63.

23 Id. at 63-64.

24 Id. at 64.

Those parties who challenge Verizon NJ's compliance with Section 271(c)(1)(A), contend that the amount of residential competition in the state is inadequate to show an irreversibly open market and, therefore, does not warrant this Board's recommendation of the approval of Verizon NJ's application by the FCC.

The FCC has emphasized that, to satisfy Track A, a BOC does not have to prove a particular level of competition. Section 271(c)(1)(A) does not require that a BOC demonstrate "a specified level of geographic penetration by a competing provider," nor does it "require that a new entrant serve a specific market share in its service area to be considered a 'competing provider.'"[25]. In fact, in adopting the 1996 Act, both the Senate and the House rejected language that would have triggered a market share requirement.[26]

The FCC recently stated that, "[f]actors beyond the control of the BOC, such as individual competitive LEC entry strategies might explain a low residential customer base. We note that Congress specifically declined to adopt a market share or other similar test for BOC entry into long distance."[27]

The test for satisfaction of Section 271(c)(1)(A) is not a loss of market share, nor whether CLECs are serving "enough" residential customers, but rather whether there exists an "actual commercial alternative" to Verizon NJ.[28] Put simply, Track A visualizes a demonstration of *a competitor* in the local exchange market."[29]

The record indicates that Allegiance, AT&T, ARC Networks, Inc. (d/b/a InfoHighway Communications Corporation), Essex Communications (d/b/a eLEC Communications Corp.), Focal, MCI WorldCom, MetTel, PaeTec, and XO Communications, collectively all provide telephone exchange service either exclusively or predominantly over their own facilities to residential subscribers and/or to business subscribers. Verizon NJ has provided evidence that a number of carriers in New Jersey serve large numbers of business customers through facilities-based service, and the fact that they do not also provide facilities-based service to residential customers is a business Decision on their part.[30] Neither these carriers' business Decisions nor the Decisions of potential customers to decline these carriers' services should control Verizon NJ's entry into the long distance market.

E. Conclusion

25 Ameritech Michigan 271Order ¶¶ 76-77.

26 The Senate rejected an amendment to the 1996 Act that would have required the presence of competing carriers "capable of providing a substantial number of business and residential customers with telephone exchange or exchange access service" prior to the approval of a BOC's in-region, interLATA entry. 141 Cong. Rec. S8319-26 (daily ed. June 14, 1995) (emphasis added). The House also rejected a scale and scope requirement for local competition, eliminating language that would have required the presence of an unaffiliated competing provider that was offering service that was comparable in "price, features, and scope" to that offered by the RBOC. 141 Cong. Rec. H8444-60 (daily ed. Aug. 5, 1995) (emphasis added).

27 Memorandum Opinion and Order, I/M/O Application of Verizon Pennsylvania Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc., and Verizon Select Services Inc. for Authorization to Provide In-Region InterLATA Services in Pennsylvania, CC Docket No. 01-138, FCC 01-269 (September 19, 2001) ("the Pennsylvania 271 Order") at ¶126.

28 Memorandum Opinion and Order, I/M/O Joint Application by SBC Communications, Inc., Southewestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29 (January 22, 2001) (Kansas/Oklahoma 271 Order") at ¶42 ,as long as more than a de minimis number of customers are being served by a CLEC providing a facilities-based service, section 271(c)(1)(A) is satisfied).

29 SBC Communications Inc. v. FCC, 138 F.3d 410, 413 (D.C. Cir. 1998) (emphasis added).

30 See generally ,Attachment 101 to Bone Declaration.

Based on the Board's review of the evidence, the Board FINDS that Verizon NJ has demonstrated compliance with the statutory requirements of Section 271 (c). The Board specifically finds that Verizon NJ complies with the requirements of Section 271 (c)(1)(A) regarding the presence of facilities-based competitors, because it has provided sufficient evidence that one or more carriers are providing local exchange service either exclusively over their own telephone exchange service facilities or in combination the of services of another carrier.

In order for the FCC to approve its application for entry into the long distance market, Verizon NJ must also demonstrate that it has satisfied the requirements of section 271(c)(2)(B) of the Act. To do so, Verizon NJ must demonstrate that the 14 checklist items are available and, in fact, are being provided to local competitors in New Jersey. These checklist items are discussed individually below.

VERIZON NJ COMPLIANCE WITH SECTION 271 (C) (2) (B)

Section 271(c)(2)(B) sets forth 14 checklist items. As part of section 271(c)(2)(B)(2), Verizon NJ is required to have a fully functional and non- discriminatory OSS in place to provide service for CLECs. OSS performance is measured in part by metrics. Poor performance on the metrics is addressed in part by remedies. Change management is a significant component of OSS and metrics. OSS, metrics, change management and remedies are applicable to the various checklist items. For a complete description of OSS and change management, see discussion of Checklist item 2. A number of issues related to metrics and remedies will be introduced in other checklist items but more fully resolved in the discussion of metrics and remedies.

Checklist Item 1 -- Interconnection

1. Description of Checklist Item

Section 271(c)(2)(B)(i) of the competitive checklist requires BOCs to provide "interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." Section 251(c)(2) imposes upon ILECs the "duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and exchange access." In the Local Competition First Report and Order, the FCC concluded that the term "interconnection" under section 251(c)(2) refers "only to the physical linking of two networks for the mutual exchange of traffic."[31]

2. Standard of Review

First, the ILEC must provide interconnection at "any technically feasible point within [its] network."[32] Second, an ILEC must provide interconnection that is "at least equal in quality to that provided by the local exchange carrier to itself or . . . [to] any other party to which the

31 First Report and Order, In the Matter of Implementation of the Local Competition Provisions in CC Docket No. 96-98, FCC 96-325, August 8, 1996) ("Local Competition First Report and Order" at ¶ 176).

32 47 U.S.C. § 251(c)(2)(B); see Local Competition First Report and Order at ¶¶ 204-07.

carrier provides interconnection."[33] Finally, an ILEC must provide interconnection "on rates, terms and conditions that are just, reasonable and nondiscriminatory, in accordance with the terms and conditions of the agreement and requirements of this section [251] and section 252."[34]

ILECs must also allow competing carriers to choose any method of technically feasible interconnection at a particular point on the ILEC's network.[35] One common means of interconnection is the provisioning of interconnection trunking by the ILEC. In the Local Competition First Report and Order, the FCC concluded that to implement the "equal in quality" requirement under section 251, an ILEC must provide interconnection between its network and that of a requesting carrier at "a level of quality that is at least indistinguishable from that which the incumbent provides itself, a subsidiary, an affiliate, or any other party."[36] This duty requires the incumbent to design and to operate its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within the ILEC's network.[37]

In the Local Competition First Report and Order, the FCC identified trunk group blockage and transmission standards as indicators of an ILEC's technical criteria and service standards.[38] Thus, in prior section 271 applications, the FCC reviewed trunk group blockage data and concluded that disparities in trunk group blockage indicated a failure to provide interconnection to competing carriers "equal in quality" to the interconnection the BOC provided to its own retail operations.[39]

Moreover, the FCC examines the percent of the ILEC's common final trunk groups exceeding their engineering design and the percent of total CLEC dedicated final trunk groups exceeding the same engineering design.[40] The FCC does such an examination so as to determine whether the ILEC designs and provides interconnection trunks to CLECs using the same technical standard it uses to design its own facilities.

Additionally, the FCC concluded that the requirement to provide interconnection on terms and conditions that are "just, reasonable, and nondiscriminatory" means that an ILEC must provide interconnection to a competitor in a manner no less efficient than the way in which the ILEC provides the comparable function to its own retail operations.[41] The FCC has interpreted this obligation to include, among other things, the ILEC's installation time for interconnection

33 47 U.S.C. § 251(c)(2)(C).

34 47 U.S.C. § 251(c)(2)(D). We Local Competition First Report and Order at ¶¶ 204-07.

34 47 U.S.C. § 251(c)(2)(C).

34 47 U.S.C. § 251(c)(2)(D).

35 Local Competition First Report and Order at ¶ 549.

36 Local Competition First Report and Order at ¶ 224; see also 47 C.F.R. 51.305(a)(3).

37 Ibid..

38 Id. at ¶ 224.

39 Ameritech Michigan 271 Order at ¶¶ 224-245; Second BellSouth Louisiana 271 Order at ¶77; cf. Memorandum Opinion and Order, In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, FCC 99-404 (December 22, 1999) at ¶ 69 ("BA NY 271 Order"); Memorandum Opinion and Order, In the Matter of Application of Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a/ Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas, CC Docket No. 00-65, FCC 00-238 (June 30, 2000) at ¶¶ 67-69 ("SWBT Texas 271 Order"); Kansas/Oklahoma 271 Order at ¶225.

40 BA NY 271 Order at ¶ 69, n. 140.

41 Local Competition First Report and Order at ¶ 218.

service and its provisioning of two-way trunking arrangements.[42] Similarly, repair time for troubles affecting interconnection trunks is useful for determining whether a BOC provides interconnection service under the "terms and conditions that are no less favorable than the terms and conditions" the BOC provides to its own retail operations.[43]

Another common means of interconnection is collocation at the LEC's premises. Section 251(c)(6) of Act imposes upon ILECs "the duty to provide . . . for physical collocation of equipment necessary for interconnection or access to unbundled network elements at premises of the [LEC], except that the carrier may provide for virtual collocation if the [LEC] demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."[44] Consequently, additional technically feasible methods of interconnection include physical and virtual collocation and meet point arrangements.[45]

In the Advanced Services First Report and Order, the FCC revised its collocation rules to require ILECs to include shared cage and cageless collocation arrangements as part of their physical collocation offerings and set forth various other requirements ILECs must meet in provisioning collocation arrangements.[46]

In prior section 271 applications, the FCC has considered the provision of collocation as an essential prerequisite to demonstrating compliance with item 1 of the competitive checklist.[47] To show compliance with its collocation obligations, a BOC must have processes and procedures in place to ensure that all applicable collocation arrangements are available on terms and conditions that are "just, reasonable, and nondiscriminatory" in accordance with section 251(c)(6) and the FCC's implementing rules.[48] Data showing the quality of procedures for processing applications for collocation space, as well as, the timeliness and efficiency of provisioning collocation space and arrangements helps to evaluate a BOC's compliance with its collocation requirements.

In conclusion, to satisfy its obligations under this checklist item, a section 271 applicant must demonstrate that it provides competing carriers with interconnection that is equal in quality to the interconnection that it provides to its own retail operations, on rates and terms that are just, reasonable, and nondiscriminatory.

3. Summary of the Evidence Before the Board

Verizon NJ

42 BA NY 271 Order at ¶ 70; SWBT Texas 271 Order at ¶¶ 70-71; SWBT Kansas and Oklahoma 271 Order at ¶¶ 226-227; Memorandum Opinion and Order In the Matter of Application of Verizon NJ New England Inc., Bell Atlantic Communications, Inc. (d/b/a/ Verizon Long distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., For Authorization to Provide In-Region, InterLATA Services in Massachusetts, CC Docket No. 01-9, FCC 01-130 (April 16, 2001) ("Verizon MA 271 Order") at ¶186-187).

43 BA NY 271 Order at ¶ 65.

44 47 U.S.C. § 251(c)(6).

45 Local Competition First Report and Order at ¶¶ 212, 550, and 553; 47 C.F.R. § 51.321(b).

46 First Report and Order and Further Notice of Proposed Rulemaking, In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, FCC 98-48 (March 31, 1999) ("Advanced Services and Order") at ¶¶ 41-42.

47 See Second BellSouth Louisiana 271 Order at ¶ 66-73; BA NY 271 Order at ¶¶ 73-75, 78-80; SWBT Texas 271 Order at ¶¶ 73-75; KansasOklahoma 271 Order at ¶¶ 228-231; Verizon MA 271 Order at ¶¶ 194-196.

48 Ibid.

1. Interconnection and Trunking

Verizon NJ asserted that CLECs may interconnect with its network for the transport and termination of traffic in a variety of ways. In this proceeding,[49] Verizon NJ stated that it makes interconnection available at the line-side of the local switch; the trunk-side of a local switch; the trunk interconnection points for a tandem switch; central office cross-connect points; out of band signaling transfer points necessary to exchange traffic at these points and to access call-related databases;[50] and the points of access to unbundled network elements.[51] Verizon NJ further asserted that interconnection at technically feasible points other than those identified above in the Verizon NJ network, as well as those specified in individual interconnection agreements, are available upon request through a Bona Fide Request ("BFR") process.[52] Verizon NJ asserted that it provides interconnection trunking through interconnection agreements.[53] According to Verizon NJ, CLECs order interconnection trunks from Verizon NJ using the industry standard Access Service Request ("ASR") which can be electronically transmitted to Verizon NJ using Connect Direct (previously referred to as Network Data Mover (NDM)), or by fax, if the CLEC has not yet implemented electronic systems.[54]

According to Verizon NJ, its provisioning of local interconnection trunks is keeping pace with the expansion of CLEC-provided service. Verizon NJ stated that at the end of June 2001, it had over 298,000 local interconnection trunks in service with 29 CLECs.[55] Verizon NJ stated that CLECs have nearly two-thirds as many interconnection trunks in service as Verizon NJ has in its entire local interoffice network.[56]

Verizon NJ reported that during 2000, it more than doubled the number of interconnection trunks in service between its network and the networks of CLECs by adding over 147,000 interconnection trunks.[57] According to Verizon NJ, to accomplish this, it expanded the trunk capacity of its switches by 162,500 tandem trunk terminations and by 197,000 end-office trunk terminations. Of the approximately 298,000 interconnection trunks in service with CLECs in June 2001, about 63% are direct end-office trunks, connecting 182 of Verizon NJ's 196 host

49 Checklist Declaration at ¶29, and Attachment 202.

50 Verizon NJ has stated that it provides interconnection to out-of-band Signaling Transfer Points ("STPs") of the Signaling System 7 ("SS7") such that stand-alone access to Verizon NJ's STPs is available with or without Verizon NJ-provided signaling link transport. In addition, Verizon NJ asserted it will exchange Custom Local Area Signaling Services ("CLASS") related Transactional Capabilities Application Part ("TCAP") messages with CLECs to facilitate the interoperability of out-of-band signaling features and service between the carriers' end users. This allows a CLEC to offer call feature options including call set-up and CLASS services, as well as access to databases. CLECs may interconnect their switches to Verizon NJ's STPs via Access Link ("A-Link") connections or they can interconnect their STPs to Verizon NJ's STPs via Diagonal Link ("D-Link") connections, depending on the option that best meets their network needs. See Checklist Declaration¶ 30. The manner in which Verizon NJ provides CLECs with nondiscriminatory access to databases, specifically the 800 Database, Line Information Database ("LIDB"), the Local Number Portability ("LNP") database, and the Advanced Intelligent Network ("AIN"), is discussed in Checklist Item 10.

51 Verizon NJ asserted that it also provides CLECs with trunking to access E911, Directory Assistance, and Operator Services. According to Verizon NJ, at the end of June 2001, Verizon NJ had provided over 1,350 E911 trunks to 21 CLECs. In addition, Verizon NJ asserted that it has provided approximately 1,050 dedicated trunks to facilities-based CLECs in conjunction with providing Directory Assistance and Operator Call Completion services. See Checklist Declaration ¶ 31. These arrangements are discussed in further detail in Checklist item 7.

52 See Checklist Declaration at ¶ 28. The BFR process is provided for in Verizon NJ interconnection agreements. The BFR process provides a CLEC the opportunity to request that Verizon NJ deploy for the CLEC a capability or facility not normally available in Verizon NJ's network. The process also allows Verizon NJ to determine whether the request is technically feasible, and if so, the price, terms and conditions under which it can be offered.

53 Checklist Declaration at ¶ 35.

54 Checklist Declaration at ¶ 42.

55 Checklist Declaration at ¶ 36.

56 Ibid.

57 Checklist Declaration at ¶ 37.

and stand-alone end offices directly to CLEC networks, and the other 37% are trunks between Verizon NJ tandems and CLECs.[58]

Verizon NJ asserted that the volume of interconnection traffic exchanged between Verizon NJ and CLECs also increased nearly three-fold in 2000, with Verizon NJ's local interconnection trunks carrying an average of over 1.4 billion minutes of traffic each month. Through the end of June 2001, the average number of minutes exchanged has risen further to 1.8 billion per month.[59]

In addition to providing traditional 56 Kbps interconnection trunks, Verizon NJ also provides CLECs with 64 Kbps Clear Channel interconnection trunks. These 64 Kbps Clear Channel trunks use a signaling format that makes available an additional 8 Kbps of bandwidth for Integrated Services Digital Network transmission, instead of using that bandwidth for communications between the switches at either end of the trunk.[60] Verizon NJ stated that it also makes available two-way measured-use trunking for CLECs that want this option in New Jersey.[61] According to Verizon NJ, these trunks are available pursuant to negotiated interconnection agreements.[62] As of June 2001, Verizon NJ stated it has over 8,100 two-way measured trunks in service with CLECs.[63]

Verizon NJ asserted that it uses standard intervals when provisioning interconnection trunks for CLECs.[64] In New Jersey, Verizon NJ stated that it tracks CLEC trunk order performance based on a grouping of trunk orders into six different categories, which is based on whether the trunk request is associated with a forecast, as well as the size and complexity of the trunk request.[65]

Verizon NJ stated that it provides Firm Order Confirmations ("FOCs") for trunk orders on a timely basis and is consistently installing interconnection trunks that meet or exceed the provisioning measurement intervals for interconnection trunks in each of the six categories.[66] Verizon NJ further asserted that these intervals also compare favorably to the intervals that Verizon NJ offers interexchange carriers for Feature Group D Switched Access trunks, both for smaller orders (forecasted additions of 192 trunks or less), and for larger (>192 trunks) and more complex orders, as well as for orders that were not forecasted.[67] Verizon NJ asserted that over the entire period from April 2001 through September 2001, Verizon NJ met over 97% of the due dates for CLEC interconnection trunks.[68]

Verizon NJ further asserted that the interconnection it provides to CLECs is technically identical to the interconnection that it provides between the switches in its local network.[69] Verizon NJ stated that it uses the same equipment, and in some cases shares exactly the same facilities, for CLEC and Verizon NJ local traffic, and that it maintains and repairs interconnection trunks

58 Ibid.

59 Id. at ¶ 38.

60 Id. at ¶ 33.

61 Id. at ¶ 32.

62 Ibid.

63 Ibid.

64 Id. at ¶ 39. Verizon NJ explained that these intervals are the same as those established for ASRs that Verizon NJ uses in provisioning network trunking arrangements for interexchange carriers.

65 Id. at ¶ 40.

66 Id. at ¶¶ 41-43 and Attachment 204.

67 Id. at ¶ 43.

68 Exhibit VNJ -21 (VNJ C2C Reports April-September 2001); Verizon NJ Brief, p. 10.

69 Checklist Declaration at ¶ 47.

in a nondiscriminatory manner by using the same equipment and personnel for CLEC and Verizon NJ trunks.[70] Verizon NJ stated that the C2C performance reports indicate that trouble reports for interconnection trunks were virtually nonexistent.[71] According to Verizon NJ, other performance measures for interconnection trunking during this same period, such as Mean-Time-To-Repair – MR 4-01 -, and % Cleared (all troubles) within 24 Hours – MR 4-04 -, show that Verizon NJ meets the Board's Carrier-to-Carrier requirements.[72]

Verizon NJ asserted that it designs interconnection trunks to CLECs using the same technical criteria it uses to design its own facilities.[73] Verizon NJ stated that it consistently provides CLECs as a group with a higher grade of service for calls from Verizon NJ subscribers to CLEC end-users than it does for calls among Verizon NJ subscribers. Verizon NJ reported that there has been a relatively low level of final trunk blocking for either CLECs or Verizon NJ.[74] Verizon NJ further asserted that when it is compared to each CLEC individually, the data indicates that the vast majority of CLECs experience a better record operating below the trunk group engineering design on the CLEC-dedicated final trunk groups than Verizon NJ experiences on its own common final trunks.[75] Verizon NJ presented data that summarized the number of CLECs that had fewer final trunk groups (on a percentage basis) operating over the engineering design level than Verizon NJ since January 2001.[76] That data showed that almost 75% of CLECs had fewer final trunk groups operating over the engineering design than Verizon NJ for every month from January to June 2001, and that all of these CLECs had zero trunk groups operating over the engineering design levels.[77]

Verizon NJ also provided evidence from "trunk utilization" traffic studies because Verizon NJ asserted that a simple measurement of trunk group quantities "over" and "under" the engineering design does not present a complete or adequate indicator of the quality of interconnection Verizon NJ provides to the CLECs.[78] It asserted that these traffic studies provide a more accurate comparison of the quality of interconnection Verizon NJ provides CLECs in the form of additional call capacity for dedicated final CLEC interconnection trunks as compared to common final trunks within Verizon NJ's own network. For January 2001 through June 2001, the average utilization ratio ("trunks required" divided by "trunks in service") was 54.81% for CLEC-dedicated final trunk groups and 64.54% for Verizon NJ's own common final trunks groups.[79] According to Verizon NJ, the lower level of trunk utilization for CLEC dedicated final trunk groups shows that Verizon NJ is providing a better grade of service in aggregate for CLEC dedicated final trunk groups than for its own common final trunk groups. That is, Verizon NJ contends more CLEC interconnection trunks have been installed and are operational than are needed to operate at the same engineering design level of blocking as Verizon NJ's own common final trunk groups.[80] In addition, Verizon NJ argued that, consistent with in the Pennsylvania 271 Order,[81] Verizon NJ will agree to a single point of interconnection

70 Ibid.

71 Ibid.

72 Exhibit VNJ-21 Verizon NJ Brief, pp. 11-12.

73 Checklist Declaration at ¶¶ 48-50.

74 Id. at ¶ 50.

75 Id., at ¶ 51.

76 Id. at ¶ 52 and associated Attachment 205.

77 Id. at ¶ 53.

78 Id. at ¶¶ 54-57.

79 Id., at ¶ 57.

80 Ibid.

81 Pennsylvania 271 Order ¶ 100.

at the CLEC's option, but that it has negotiated and now arbitrated for compensation terms that are reasonable given the CLEC's choice.

2. Collocation Arrangements

Verizon NJ asserted that it provides CLECs with several types of physical collocation,[82] virtual collocation[83] and other collocation alternatives,[84] in compliance with its responsibilities under the Act and in accordance with the requirements of the FCC's Advanced Services Order. These multiple collocation offerings are available to CLECs under Verizon NJ's BPU Tariff No. 4 and in interconnection agreements.[85]

Verizon NJ's No. 4 tariff contains the rates and charges that apply to the multiple collocation offerings and alternatives available to CLECs in New Jersey. The rates and charges contained in this tariff include standard rates and charges for various elements including application fees, cage construction, space conditioning, and floor space.[86] On April 4, 2001, Verizon NJ, jointly with AT&T, MCI WorldCom and Sprint, submitted a joint settlement agreement and proposed tariff revisions reflecting mutually agreeable rates and key terms and conditions for physical and virtual collocation arrangements.[87]

According to Verizon NJ, it has developed and implemented comprehensive methods for ordering collocation arrangements as well as procedures to ensure that it provides CLECs with quality collocation arrangements.[88] Verizon NJ asserted that it has the adequate support staff to accommodate the CLECs' increasing demand for both physical and virtual collocation arrangements.[89] Verizon NJ reported that in 1998, it provided 7 carriers with 38 physical collocation arrangements (traditional caged, Secured Collocation Open Physical Environment ("SCOPE") and Cageless Collocation Open Environment ("CCOE") and 4 carriers with 5 virtual collocation arrangements.[90] In 1999, Verizon NJ provided 16 carriers with 452 physical collocation arrangements and one carrier with 2 virtual collocation arrangements.[91] As of June 2001, Verizon NJ asserted that it provided 38 carriers with 1,361 physical collocation arrangements and 8 carriers with 38 virtual collocation arrangements.[92]

Verizon NJ reported that through June 2001, CLECs had access to 88.8% of Verizon NJ's residential access lines and 94.3% of Verizon NJ's business access lines through 1,017 collocation arrangements in place and pending in 153 central offices.[93]

Additionally, Verizon NJ asserted that there is a regular exchange of information that occurs between Verizon NJ and the CLECs when providing collocation arrangements.[94] For example,

82 Checklist Declaration at ¶¶ 64-65.

83 Checklist Declaration at ¶ 66.

84 Checklist Declaration at ¶¶ 67-72.

85 Checklist Declaration at ¶ 63.

86 Checklist Declaration at ¶ 98.

87 Checklist Declaration Attachment 206 ("Collocation Joint Petition and Settlement Agreement")

88 Checklist Declaration at ¶¶ 86-97.

89 Id. at ¶ 74.

90 Id. at ¶ 73.

91 Ibid.

92 Ibid.

93 Id. at ¶ 75.

94 Id. at ¶ 77.

for the period from April 2001 through June 2001, Verizon NJ indicated that 100% of the 33 acknowledgement letters were sent to the CLECs within the first five business days after receiving the applications.[95]

Verizon NJ further asserted that it provides physical collocation arrangements on a timely basis. Verizon NJ reported that from April 2001 through June 2001, 100% of the 23 physical collocation arrangements it had provided to CLECs were completed on time.[96]

Verizon NJ also asserted that it is prepared to provide virtual collocation arrangements to CLECs upon request in a standard interval of 60 business days.[97] Verizon NJ presented evidence that the one virtual collocation arrangement that it provided to CLECs from December 1999 through November 2000 was completed on time.[98]

Verizon NJ stated that, on its own initiative, it has reconfigured its own equipment space, relocated administrative personnel and functions, removed power and frame equipment, and redesigned storage areas solely to accommodate CLEC requests for physical collocation arrangements. Verizon NJ asserts that it has removed obsolete, unused equipment or "abandoned in place" equipment for the sole purpose of creating additional physical collocation space for CLECs.[99]

Verizon NJ asserted that its collocation website provides CLECs with information on the availability of collocation space in its central offices.[100] Verizon NJ also asserted that it provides CLECs with opportunities to tour its central offices in accordance with FCC rules.[101] Verizon NJ stated it will file space exhaustion notification with the Board only when Verizon NJ cannot provide physical collocation to CLECs due to insufficient space or technical reasons in accordance with the FCC requirements, as described in the Advanced Services Order at ¶ 56[102]

Other Parties' Comments

Interconnection Trunking

Cablevision Lightpath

Lightpath challenged Verizon NJ's compliance with this checklist item. Lightpath asserted that Verizon NJ does not comply with the Act because it has not agreed to permit Lightpath to establish a single point of interconnection in its negotiation of a new interconnection agreement.[103] It stated that Verizon NJ's position in the inter-company negotiations is contrary to FCC regulations and legal precedent. Lightpath contended that Verizon NJ's conduct has

95 Ibid.

96 Id. at ¶ 78.

97 Id. at ¶ 79 (explaining the processes and procedures Verizon NJ follows for creating a virtual collocation arrangement).

98 Ibid.

99 Id. at ¶¶ 80-81.

100 Id. at ¶ 82.

101 Id. at ¶ 83; see also Advanced Services Order at ¶ 57; 47 C.F..R. §51-321(f).

102 Id. at ¶ 85See also Order on Reconsideration and Second Further Notice of Proposed Rulemaking, I/M/O Deployment of Wireline Services Offering Advanced Telecommunications Capabilities and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996. CC Docket Nos. 98-147 and 96-98, FCC 00-297 (August 10, 2000) ("Reconsideration Order") at ¶61.

103 Lightpath Brief at 12-16.

forced it to expend resources unnecessarily in negotiations and ensuing arbitration of this issue before the Board.[104]

Lightpath stated that, in the arbitration proceeding, Verizon NJ tried to give the appearance of complying with the single interconnection point rule by suggesting that establishing multiple Interconnection Points ("IPs") is only an "option" that CLECs like Lightpath may choose in establishing network interconnection with Verizon NJ.[105] Lightpath asserted that Verizon NJ's proposal imposes a penalty on Lightpath if it does not establish additional IPs pursuant to Verizon NJ's timeframe because Lightpath would be required to pay Verizon NJ for the transport of Verizon-originated traffic on Verizon's network and, in addition, receive a reduced reciprocal compensation rate.[106]

Collocation

AT&T

AT&T was the only party to file testimony regarding Verizon New Jersey's collocation performance. It contended that Verizon NJ does not offer collocation on terms that are non-discriminatory, and therefore does not comply with the obligations of this checklist item.[107] Specifically, AT&T claimed that Verizon NJ's collocation tariff imposes excessively long lead times to install physical collocation, as well as Verizon NJ's Virtual Collocation and CCOE arrangements;[108] that Verizon NJ is "erecting economic barriers to collocation" by double charging CLECs for the power used in collocation arrangements by billing based upon "fused" amps rather than "load" amps;[109] and that Verizon NJ has not implemented the Board's October 6, 1999 Summary Order directive to set rates that are equal to the lowest comparable rates in the region.[110]

Verizon NJ argued that its intervals for traditional physical, SCOPE, CCOE, and virtual collocation arrangements are reasonable and entirely consistent with the Board's previous directives on this topic.[111] Verizon NJ also stated that it has implemented the Board's directive regarding rates in its October 13, 2001 compliance filing.[112] Further, Verizon stated that it is unclear why AT&T made such claims against Verizon NJ's rates since it was a signing party to the Collocation Joint Petition and Settlement Agreement that settled all Verizon NJ collocation rate issues and certain non-rate issues.[113]

1. Discussion

a. Interconnection

Based upon our review of the record in this case and prior FCC Section 271

104 Id. at 15.

105 Id.

106 Id. at 15. Lightpath's reciprocal compensation issue is discussed in Checklist 13 infra.

107 AT&T OSS Declaration at ¶¶ 88 – 92.

108 Id. at ¶¶ 88-89.

109 Id. at ¶¶ 90.

110 Id. at ¶¶ 91.

111 VNJ Reply Checklist Declaration at ¶ 23-25.

112 Id. at ¶ 26.

113 Id. at ¶ 27.

Orders, we are persuaded that Verizon NJ provides equal-in-quality interconnection on terms and conditions that are just and reasonable in accordance with the requirements of section 251(c)(2) and 252(d)(1), as specified in section 271.

In a manner similar to the Verizon local operating companies in New York, Pennsylvania, Massachusetts and Connecticut, Verizon NJ makes interconnection available through interconnection agreements and through its tariff. Likewise, Verizon NJ receives orders for interconnection trunks through the ASR process, which it accepts electronically or by fax. More importantly, Verizon NJ has provided data to demonstrate that it is providing non-discriminatory interconnection trunking service to competing carriers.
Verizon NJ's data demonstrates that it designs its interconnection facilities to meet "the same technical criteria and service standards" that are used for the interoffice trunks within its own network. The trunk blockage and call capacity data that Verizon NJ presented in this proceeding indicates that Verizon NJ provides interconnection that is equal in quality to the interconnection it provides its own network.

Verizon NJ provides interconnection on terms and conditions that are just, reasonable and nondiscriminatory in so far as Verizon NJ's data indicates that it has provided reasonable installation intervals to CLECs for the establishment of local interconnection trunks, and has installed these trunks in intervals that are comparable to the intervals provided to interexchange carriers. Further, the evidence indicates that Verizon NJ has provided CLECs with high quality facilities with a low incidence of troubles, and it has dealt promptly with any troubles that have arisen.

Verizon NJ provides interconnection at all technically feasible points. We find that Verizon NJ has approved interconnection agreements that spell out readily available points of interconnection, and provides a process for requesting interconnection at additional, technically feasible points. Finally, with respect to Verizon NJ's specific dispute with Lightpath, this is a matter before the Board, that we have addressed in the arbitration proceeding between the parties, BPPU Docket No. TO01080498 and will not addressed here.[114]

b. Collocation

For purposes of section 271 authorization, we determine that Verizon NJ has demonstrated that its collocation offering satisfies the requirements of Sections 271 and 251 of the Act. The multiple collocation options and alternatives offered, as well as, the standard operating procedures used by Verizon NJ to provide collocation are consistent with law. Verizon NJ's data also indicates that Verizon NJ meets our requirements for provisioning collocation arrangements and that it provisions collocation in a timely manner, consistent with the intervals established in the Summary Order. Further, we are persuaded by Verizon NJ's comments regarding AT&T's allegations with respect to collocation rates. Since AT&T is a signing party to the Board approved settlement agreement, which is intended to resolve all rate issues, AT&T's argument on this issue is moot.

Conclusion

The Board FINDS that Verizon NJ has demonstrated compliance with Checklist Item 1 of section 271.

114 See Pennsylvania 271 Order at ¶ 118.

Checklist Item 2 -- Access to UNEs

1. Description of Checklist Item

There are three subject areas generally addressed under this checklist item. They are nondiscriminatory methods for access to UNEs, including combinations of UNEs, rates established for UNEs, and nondiscriminatory access to UNEs (and frequently resale services) through operations support systems ("OSS"). We will address each of these areas separately below.
Section 271(c)(2)(B)(ii) of the Act requires a Section 271 applicant to offer "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." Section 251(c)(3) of the Act requires the incumbent LEC to "provide to any requesting telecommunications carrier . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point under rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Section 251(c)(3) further provides that an incumbent LEC "shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service." Section 252(d)(1) of the Act requires that state commission determinations adopting rates for network elements be based on the cost of providing the network elements and may include a reasonable profit.

Methods of Access to UNEs

2. Standard of Review

In its recent Pennsylvania 271 Order, the FCC stated that the ability of requesting carriers to use unbundled network elements, as well as combinations of unbundled network elements, is integral to achieving Congress' objective of promoting competition in local telecommunications markets.[115] The FCC stated that, because the use of combinations of unbundled network elements is an important strategy for entry into the local telecommunications market, as well as an obligation under the requirements of section 271, it examines section 271 applications to determine whether competitive carriers are able to access and combine network elements as required by the Act and the Commission's regulations.[116] In the Pennsylvania 271 Order, the FCC stated that: "[I]n Order to comply with checklist item 2, a BOC also must demonstrate that it provides nondiscriminatory access to network elements in a manner that allows requesting carriers to combine such elements and that the BOC does not separate already-combined elements, except at the specific request of the competitive carrier."[117]

Specifically, in Pennsylvania, the FCC reviewed Verizon PA's provision to CLECs of access to both combinations of the loop-switch-transport elements (UNE-platform) and the loop-transport elements (enhanced extended loop or EEL).[118]

115 Pennsylvania 271 Order, at Appendix C at ¶ , at 646.

116 Ibid.

117 Pennsylvania 271l Order at ¶ 73.

118 Id. at ¶¶ 73-75

According to section 252(d)(1) of the Act, pricing of network elements shall be non-discriminatory, shall be based on the cost of providing the network element, and may include a reasonable profit. The FCC has determined that prices for UNEs must be based on the total element long-run incremental cost ("TELRIC") of providing those elements.[119]

SUMMARY OF EVIDENCE BEFORE THE BOARD

Verizon NJ

Nondiscriminatory Access to UNEs

Verizon NJ contended that it provides non-discriminatory access to network elements, both separately and in combined forms[120]. Verizon NJ stated that it uses the same network facilities to provide and maintain unbundled network elements to requesting carriers that it uses to provide bundled services to its own end users. [121] Specifically, according to Verizon NJ, its facility assignment system and processes do not discriminate between retail service requests and unbundled network element requests in selecting facilities. [122]Verizon NJ stated that it inventories network facilities in various assignment systems based on their technical characteristics and specific physical location(s), and that, facilities are available that meet the requirements of the unbundled element(s) requested, those facilities are assigned without regard to the unbundled nature of the request or whether the customer is a Verizon NJ end user or a CLEC requesting a network element from Verizon NJ.[123]

Verizon NJ stated that it provides CLECs with access to UNEs, including loops, dedicated local transport, and dedicated end office and tandem switching ports, on a standalone basis at the CLECs' physical or virtual collocation arrangements in a Verizon NJ central office.[124] CLECs can obtain access to these elements through cross-connect jumper wires at the CLECs' collocation arrangements, and can also combine these network elements at their physical collocation arrangements by simply connecting these jumper wires.[125] According to Verizon NJ, CLECs do not need their own transmission equipment in every Verizon NJ central office to access or combine network elements with their own facilities to provide telecommunications services.[126]

Verizon NJ asserted that, in addition to standard physical and virtual collocation arrangements, it also provides a variety of alternative collocation arrangements, which allows CLECs to access, or combine individual network elements, such as smaller physical collocation cages, shared collocation cages and "cageless" collocation arrangements.[127] Verizon NJ sated that it offers each of these alternatives pursuant to its interconnection agreements and in its collocation tariff, B.P.U.- N.J. No. 4, and that these alternative arrangements can be used by CLECs to combine network elements in the same manner as standard collocation arrangements.[128] Verizon NJ further asserts, that pursuant to its interconnection agreements,

119 Verizon MA 271 Order at ¶ 16.

120 Checklist Declaration at ¶ 101.

121 Ibid. at ¶ 101

122 Ibid.

123 Exhibit. VNJ 3, at ¶ 102.

124 Id. at ¶ 103.

125 Ibid.

126 Id. at ¶ 103.

127 Id. at ¶ 104.

128 Ibid.

CLECs do not need to establish collocation arrangements with Verizon NJ to access UNEs, unless technically necessary, and that CLECs may use the Bona Fide Request process to request alternative means of access. [129]

Verizon NJ claimed that it also provides UNEs in an already combined form, and specifically, stated that it provides CLECs with the combination of the loop and local switching unbundled network elements known as UNE-Platform ("UNE-P") pursuant to interconnection agreements and in accordance with its November 5, 1999 and May 25, 2000 compliance filings with the Board.[130] The terms and conditions applicable to this offering require Verizon NJ to offer UNE-P combinations to CLECs, under specific circumstances and in accordance with the FCC's UNE Remand Order.[131] In a UNE-P combination, Verizon NJ argued that it provides the CLEC with a pre-existing or new combination of an Unbundled Local Loop network element and the Unbundled Local Switching network element. The unbundled local switching element provided within the UNE-P combination will provide the CLEC with access -- as requested by the CLEC in the Network Design Request ("NDR") process -- to other UNEs, including Common Transport or Dedicated Transport, Shared Tandem Switching, Signaling Systems and Call-related Databases, E911, and/or Directory Assistance Services and Operator Services. There is no collocation requirement for CLECs to access local loop and local switch port UNE-P combinations, according to Verizon NJ.[132]

Verizon NJ stated that it provides combinations of unbundled loop and interoffice facility network elements, also known as Expanded Extended Loop ("EEL"), for CLECs to use to provide local exchange service to an end user.[133] EEL arrangements enable CLECs to provide unbundled loops to end users without having to collocate in every central office in which those loops terminate. Existing special access arrangements may be converted to EEL arrangements if a CLEC certifies that such arrangements provide significant local exchange service to an end user in accordance with the requirements of the FCC's UNE Remand Order and subsequent orders. Verizon NJ stated that over 2,000 such conversions have taken place in New Jersey.[134] Verizon NJ further stated that CLECs can request other technically feasible combinations of unbundled network elements in addition to UNE-P or EEL required by law or interconnection agreements via the BFR process set forth in their agreements.[135]

Verizon NJ acknowledged that it had not made available to CLECs in New Jersey three switch capabilities and features requested by ATX until recently.[136] Verizon indicated that these capabilities -- an assume dial-9 feature associated with retail and resale Centrex Custo-pak service, an analog PBX trunk port, and remote call forwarding – were not requested by any

129 ¶ 105

130 Id. at ¶¶ 106, 264

131 Third Report and Order and Fourth Further Notice of Proposed Rulemaking , I/M/O Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99-238 (September 15, 1999) ("UNE Remand Order") at ¶¶ 276-299; Supplemental Order, II/M/O implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 99,370 (November 24, 1999) ("Supplemental Order") Supplemental Order Clarification, II/M/O implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket NO. 96-98, FCC 00-183 (June 2, 2003) ("Clarification Order").

132 Checklist Declaration at ¶ 263.

133 Id. at ¶ 107. Verizon NJ stated it initially provided these combinations of elements in accordance with its service description filed in its November 5, 1999 Compliance Filing to the Board's Summary Order. Revisions to the existing service descriptions for EELs were filed on May 25, 2000 to respond to the requirements of the FCC's UNE Remand Order, and were further clarified on July 14, 2000 in response to the FCC's Supplemental Order Clarification.

134 Verizon Brief at 20, citing to the November 8, 2000 Hearing Transcript at 730.

135 Checklist Declaration at 108.

136 Verizon Brief at 20-21.

CLECs until earlier this year.[137] Verizon also claimed that it moved forward to define, develop and implement the requested capabilities upon request in a timeframe at least equal to the usual product development cycle.[138] Verizon NJ stated that "assume dial-9" has been available to ATX and other CLECs beginning in October, 2001.[139]

a. ATX

ATX contended that Verizon has failed to satisfy this Checklist item because it has not made available the three capabilities and features discussed above: an assume dial-9 feature associated with retail and resale Centrex Custo-pak service, an analog PBX trunk port, and remote call forwarding.[140] In failing to do so, ATX agued that Verizon NJ has prevented it from converting its base of resale customers to UNE-P arrangements and from pursuing new customers interested in these same features.[141] ATX stated that this has required it to continue to serve these customers via more expensive resale arrangements. This is a significant impairment in its business plan.[142] ATX also stated that when these products are made available, it will have to submit test orders to determine whether it will be able confidently to convert its base of customers. Until those tests are complete, their "availability" from Verizon NJ is only a promise of future performance.[143]

Pricing

Verizon NJ asserted that where it was directed by the Generic Order to charge specific rates for UNEs, it is charging those rates and those rates are TELRIC-based.[144] According to Verizon NJ, those rates are currently effective and approved by the Board in interconnection agreements between Verizon NJ and numerous CLECs.[145] In addition, Verizon NJ noted that on June 1, 2000, the Board initiated a new proceeding (Docket No. TO00060356) to review UNE rates, and incorporated the review of issues remanded by the United States District Court Decision concerning the Generic Order, as well as FCC orders issued since 1997.[146]

The Board notes here that on November 20, 2001, the Board announced its Decision in the UNE proceeding at it agenda meeting. In that decision, the Board established rates for certain recurring and non-recurring elements and determined cost model inputs and assumptions for all the elements. In a Secretary's letter, the Board also directed Verizon NJ to rerun its cost models to reflect those inputs and assumptions for the rates not specifically determined at the November 20, 2001 meeting.[147] Verizon NJ filed new rates on December 3, 2001 and December 10, 2001. A Summary Order was issued on December 17, 2001 adopting those rates.[148]

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137 Ibid.

138 Ibid. citing to the November 8, 2001 Hearing Transcript at 708.

139 Verizon Reply Brief at 11.

140 ATX Brief at 5-11

141 Ibid.

142 Id. at 5-6.

143 Id. at 7.

144 Checklist Declaration at ¶ 109.

145 Ibid.

146 Ibid.

147 See Nov. 20, 2001 Secretary's Letter to Verizon NJ, I/M/O the Board's Review of Unbundled Network Elements, Rates, Terms and Conditions of Bell Atlantic-New Jersey, Inc., Dkt. No. TO000060356.

148 See Summary Order, infra.

Verizon NJ also contended that in cases where the Board's 1997 Decision did not establish a rate for a particular UNE or collocation arrangement, Verizon NJ offers CLECs interim rates with a "true-up" mechanism in their respective interconnection agreements. Further, Verizon NJ made compliance filings with respect to rates and terms for particular UNEs addressed by the Board in its earlier Summary Order dated October 1999.[149] In accordance with that Order, the rates, terms and conditions in those filings were in effect upon certification by Verizon NJ, subject to final approval by the Board. Final, approved rates for those UNEs were considered as part of the recent UNE proceeding. Thus, according to Verizon NJ in those instances in which the Board decided to modify the interim rates for UNEs covered in interconnection agreements or Verizon's previous compliance filings (i.e., for new and advanced services UNEs not covered in its 1997 Generic Order), the CLECs will get the benefit of that ruling back to the time the element was first placed in service, if the CLEC exercises the true-up clause in its interconnection agreement.[150]

Verizon NJ also stated that it is committed to implementing all of the new UNE rates consistent with the Board's directives and established timeframes.[151]
AT&T, ATX, WorldCom, NJCTA, Lightpath, and the Advocate asserted that because the Board's Generic Order was remanded by the United States District Court, it did not establish rates for Verizon NJ's UNEs in accordance with TELRIC. They argued that without any TELRIC-based rates for UNEs in New Jersey, Verizon NJ is not in compliance with this checklist item.

In support of this position, WorldCom argued that because the Federal District Court found in the NJ Remand Order that the original set of UNE rates established in the Generic Order had been set in an arbitrary and capricious manner, those rates were not consistent with the requirements of the Act[152]. AT&T and ATX argued that the NJ Remand Order decision concluded the Board's methodology in the Generic Order to be unlawful.[153] NJCTA argued that the record is devoid of any evidence that Verizon NJ's UNE rates are TELRIC compliant. [154]

The CLECs also argued that Verizon NJ cannot claim it has met this checklist requirement in light of the Board's recent action in the current UNE Proceeding at its November 20, 2001 meeting. They contended that a written order must be issued, and evidence must be evaluated to determine whether Verizon has fully complied with the written order.[155] Further, the Advocate contended that the new rates must be in place for an unspecified period of time before it can be determined whether the lower UNE rates have spurred competition.[156]

Discussion

Access to UNEs

149 Summary Order , I/M/O the Board's Investigation Regarding the State of Local Exchange Competition in New Jersey, Docket No. TX98010010 October 6, 1999.

150 Checklist Declaration at ¶ 110.

151 See November 7, 2001 Hearing Transcript at 572-573, and 58, lines 3-8; November 20, 2001 Hearing Transcript at 1400, lines 13-20.

152 Worldcom Initial Brief at 12.

153 AT&T Initial Brief at 29; ATX Initial Brief at 12.

154 NJCTA Initial Brief at 10.

155 NJCTA Initial Brief at 10; WorldCom Initial Brief at 13; AT&T Initial Brief at 29-32.

156 Advocate Initial Brief at 28-30.

Verizon NJ's demonstration that it satisfies its obligations under the Act to provide nondiscriminatory means to access unbundled network elements is persuasive and we find that Verizon NJ meets those obligations. We similarly find that it meets its obligations to provide access to combinations of unbundled network elements, including UNE-P and EELs. The Board is concerned over the timing of the availability of the capabilities and features requested by ATX. While it is true that those requests did not occur until the beginning of 2001, and those services began to be offered only days before Verizon NJ's filing with the FCC, what is important is that these requests are now being met. In the future, the Board expects Verizon NJ to be more diligent in the provision of new network capabilities at the request of competitors. Finally, we are aware of the "test order" approach that ATX appears interested in taking toward the migration of its customer base to UNE-P. It is our understanding that Verizon NJ has made these capabilities and features generally available for commercial as well as test orders.

Pricing

In our November 20, 2001 Decision, the Board established rates for recurring and non-recurring elements. In a Secretary's letter, the Board also directed Verizon NJ to rerun their cost models to reflect Board established inputs and assumptions for the rate elements not specifically established at the November 20, 2001 agenda meeting. Verizon NJ has complied with the directives of the Secretary's letter, and the Summary Order of December 17, 2001 implements TELRIC rates which Verizon NJ is now bound by law to charge CLEC's effective December 17, 2001.

Conclusion

The Board is not persuaded by the comments that Verizon fails to comply with this checklist item, and we believe that Verizon NJ has sufficiently addressed each complaint. Therefore, the Board FINDS that Verizon NJ is offering non-discriminatory access to UNEs in compliance with the Act.

Based upon the evidence in the record, and because the Board has established TELRIC-compliant rates for UNEs in the UNE Summary Order dated December 17, 2001, which are the lowest in the Verizon region and among the lowest in the country, we conclude that Verizon NJ will demonstrate compliance with Checklist Item 2 if it charges no more than the new rates to all CLEC's in New Jersey, effective December 17, 2001, irrespective of any rates currently being charged either through previous agreements or otherwise. A Verizon NJ challenge to the validity or effective date of the rates or any attempt to increase or otherwise change these rates, will raise the question of whether the modified rates are TELRIC compliant, thus not permitting the Board to find compliance with Checklist Item 2. The Board also required Verizon NJ to provide to the Board by the end of business on January 10, 2002, an officer's certification that these rates are being charged effective December 17, 2001. Verizon NJ has satisfied this requirement. Moreover, the Board has required Verizon NJ to provide Staff copies of initial bills reflecting these new rates, as soon as those bills are available. As a further precaution to ensure that Verizon NJ will continue to stay in compliance with the Board's pricing requirements, the Board has authorized Staff to require Verizon NJ to periodically provide copies of sample bills to confirm that it is continuing to bill lawful rates for its UNEs.

Checklist Item 2 – Operations Support Systems ("OSS")

1. Description of Checklist Item

Verizon NJ's OSS contains databases with customer, business, and service-related information along with automated and manual systems that perform a variety of service-related functions. OSS refers to the systems that the CLECs use to obtain services from the BOC. There are five primary OSS domains: Pre-Ordering (PO), Ordering (OR), Provisioning (PR), Maintenance and Repair (MR), and Billing (BI).[157] In addition, the review of this area includes the OSS Change Management process and the technical assistance that Verizon NJ provides to CLECs.

2. Standard of Review

OSS Domains

Non-discriminatory access to the BOC's OSS is an integral part of the BOC's obligation to provide CLECs with access to wholesale facilities and services. Our review focuses on both nondiscriminatory access to UNEs and nondiscriminatory access to resold services, since Verizon NJ uses the same OSS to provide CLECs with access to both types of wholesale services.

For OSS functions with analogous BOC retail services, the FCC has stated that the BOC must provide access that permits CLECs to perform these functions in "substantially the same time and manner" as the BOC retail analogs.[158] For OSS functions with no retail analog, the FCC will examine whether they are "sufficient to allow an efficient competitor a meaningful opportunity to compete."[159]

In assessing whether a BOC has provided adequate and non-discriminatory access to each OSS function, the FCC has used a two-step analysis. The first is to determine whether the OSS is deployed. That is, whether the BOC has deployed the necessary systems and personnel to provide sufficient access to each of the necessary OSS functions and whether the BOC is adequately assisting CLECs to understand how to implement and use the OSS functions available to them.[160] The second, is to determine whether the deployed OSS functions are operationally ready as a practical matter.[161] Under the second inquiry, the FCC examines performance measurements and third party testing to ascertain whether the BOC's OSS is handling current demand and will be able to handle reasonably foreseeable future demand volumes.[162]

The FCC has said that the most probative evidence that OSS functions are operationally ready is actual commercial usage.[163] However, it also has stated that third party testing provides "persuasive evidence" of commercial readiness and viability.[164] Often, the FCC has relied upon the same type of thorough OSS testing by a third party as was conducted by KPMG Consulting

157 Each of these domains has an associated set of metrics (or measurements) and, in some cases, standards. Failure to meet an applicable standard can trigger remedies (see infra, Performance Incentive Plan discussion).

158 See, e.g., BA NY 271 Order at ¶ 85.

159 Id., at ¶ 86.

160 Id. at ¶ 87-88

161 Ibid.

162 Id. at 88-89.

163 BA NY 271 Order at ¶ 89

164 See Pennsylvania 271 Order, Appendix C at ¶ 31

("KPMG") under Board direction in New Jersey. In these circumstances, the FCC has pointed to the qualifications, experience, and independence possessed by the third party and the conditions and scope of the review itself.[165]

Pre-ordering OSS. For pre-ordering, the FCC examines whether: (1) CLECs are able to use application-to-application interfaces to perform pre-ordering functions; (2) CLECs are able to integrate pre-ordering and ordering interfaces; (3) the pre-ordering systems provide reasonably prompt response times; (4) the pre-ordering systems are consistently available in a manner that affords CLECs an opportunity to compete; and (5) CLECs have non-discriminatory access to pre-ordering functions to determine whether a loop is xDSL-capable.[166]

Ordering OSS. For ordering systems, the FCC inquires whether the BOC satisfactorily process orders and whether its ordering systems are scalable.[167] In prior Section 271 proceedings, the FCC has addressed such ordering elements as ordering systems, flow-through and manual order processing, and jeopardy and completion notices.[168] The FCC has set forth specific standards regarding each of these separate areas.[169] Generally speaking, a BOC must provide for ordering in a manner that provides CLECs with a meaningful opportunity to compete, i.e. ,in a timely and accurate manner[170].

Provisioning OSS. In addressing provisioning, the FCC examines the 271 applicant's provisioning process, timeliness, and quality to determine whether the BOC provisions CLEC orders in substantially the same time and manner as retail orders.[171]

Maintenance and Repair OSS. In addressing maintenance and repair, the FCC examines whether the 271 applicant's maintenance and repair systems process trouble inquiries and repair complaints from CLECs in substantially the same time and manner as for retail customers[172]. The FCC also inquires into whether the applicant performs maintenance and repair work for CLECs at the same level of quality that it provides for retail customers.[173] Again, any issues in the proceeding related to performance have been addressed as part of the Checklist item under review, and we follow that same course here.

Billing OSS. Addressing billing, the FCC has said that the 271 applicant is obligated to provide complete and accurate reports on the service usage of CLEC customers in substantially the same time and manner that it provides such information to itself. The applicant also must provide complete and accurate wholesale bills in a manner that gives CLECs a meaningful opportunity to compete.[174]

OSS Change Management/Technical Assistance. Addressing the OSS Change Management process, the FCC has said that it looks first at whether the change management plan as stated is adequate.[175] To make that assessment, the FCC examines whether the 271 applicant has

165 Id., at ¶ 89.

166 Pennsylvania 271 Order, Appendix C at ¶ 33; BANY 271 Order; at ¶ 128; Verizon MA 271 Order at ¶ 128

167 BA NY 271 Order at ¶ 158

168 See e.g., Pennsylvania 271 Order, Appendix C at ¶ 36.

169 See e.g., Verizon MA 271 Order at ¶¶ 71- 85.

170 Id. at ¶ 70

171 Id. at ¶ 90.

172 See e.g., Verizon MA 271 Order at ¶ 95.

173 Id. at ¶ 96.

174 Id., at ¶ 97; Pennsylvania 271 Order, Appendix C at ¶ 39.

175 Verizon MA 271 Order at ¶ 103.

demonstrated: (1) that information relating to the change management process is clearly organized and readily accessible to competing carriers; (2) that competing carriers had substantial input in the design and continued operation of the change management process; (3) that the change management plan defines a procedure for the timely resolution of change management disputes; (4) the availability of an adequate testing environment; and, (5) the efficacy of the documentation the BOC makes available to CLECs for the purpose of building an electronic gateway. In addition, the FCC evaluates whether the applicant has demonstrated a pattern of compliance with its change management process[176].

In addressing technical support, the FCC examines whether the applicant has provided the support necessary to give competing carriers nondiscriminatory access to its OSS.[177] In this area, the FCC has reviewed the handbook that Verizon provides for CLECs, the technical documentation that it provides, the training it makes available, and the access to and operation of Verizon's Wholesale Customer Care Center ("WCCC") help desk.[178]

a. Performance Measurements

The FCC looks to performance results in its review of the applicant's 271 OSS compliance. In the case of Verizon that data generally is drawn from the monthly Carrier-to-Carrier performance reports that it files with the respective state regulatory authorities. Verizon NJ presents similar data in New Jersey, and has relied upon it in its presentation in support of its application. The FCC has said with respect to such reports that the performance measurements used are "benchmark standards," not "absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist."[179] For compliance, the FCC looks for "patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete.[180] Thus, even if the data "indicates some statistically significant disparities" on a metric, this may not warrant a finding of noncompliance.[181] Isolated cases of performance disparity, especially when the number of instances measured is small, will generally not result in findings of checklist noncompliance.

b. Application Review

Finally, in its recent approval of the Verizon PA 271 application, the FCC stated that "we do not address each OSS element in detail where our review of the record satisfies us there is little or no dispute that Verizon meets the nondiscrimination requirements."[182] As it must, Verizon NJ has submitted a showing of its asserted compliance with aspects of its OSS identified in previous FCC reviews.[183]

176 Ibid.

177 Id., at ¶ 114.

178 Ibid.

179 See e.g., Verizon MA 271 Order at ¶ 13. Order at ¶ 13.

180 Id. at ¶ 122.

181 Id. at ¶137

182 Pennsylvania 271Order at ¶ 12.

183 See Exhibit VNJ-6 (PricewaterhouseCoopers review), 7 (OSS Declaration), 8 and 9 (OSS Supplemental Declaration, public and proprietary versions), and 14 and 15(Reply to MetTel, public and proprietary versions).

Many of these aspects of Verizon NJ's OSS were unchallenged by other parties, i.e., Pre-Order OSS, Provisioning OSS, Maintenance and Repair OSS, and OSS Change Management. Based upon the record created by Verizon and the results of the third party independent testing conducted by KPMG, the Board finds that Verizon NJ has demonstrated its satisfaction of the 271 requirements with respect to these unchallenged areas of its OSS.

Consistent with the FCC's analysis of Verizon's OSS in the *Pennsylvania 271 Order*, the following section will only address the following items where there exists a record controversy concerning Verizon NJ's compliance with Section 271 requirements: Ordering, OSS, Billing and CLEC Support (help desk). We begin, however, with claims that have been made concerning the value of the testing KPMG conducted under the Board's guidance.

c. Items In Controversy

a. Third Party Testing and Commercial Usage

Verizon NJ's Position

Verizon NJ relies upon three types of evidence to support its claims that OSS is functional, deployed and capable of handling commercial volumes of CLEC orders. First, it relies on commercial operating results, as demonstrated in its C2C performance data over the period from April to October 2001, supplemented by additional information supplied by witnesses in its OSS and Measurement Declaration. Second, it relies upon the results of the independent testing of its overall OSS conducted by KPMG under the direction and the guidance of the Board. Third, Verizon NJ also relies upon the expert third party testing of its electronic BOS BDT formatted bill conducted by PricewaterhouseCoopers in demonstrating its compliance with section 271 requirements for its Billing OSS. That study is discussed below in the Billing OSS subsection.

With respect to its commercial performance, Verizon NJ provides the following volume data:

> During the first half of 2001, Verizon processed more than 800,000 pre-order transactions in NJ.[184]
>
> Monthly order volumes across the former Bell Atlantic operating area increased to over 900,000 in the past year.[185]
>
> In September 2001, there were 36,000 ordering transactions in NJ.[186]

Verizon also relies on the results of the KPMG test as validation of its OSS functionality and readiness. This test, managed by the Board, encompassed 18 months with the following results as detailed on page 22 of the KPMG Final Report dated October 12, 2001:

Domain	**# Test Points**	**# Satisfied**
Relationship Management and Infrastructure	81	81
Pre-Ordering and Ordering	71	71

184 Verizon NJ Brief at 63; Exhibit VNJ-7 at ¶ 53,

185 Verizon NJ Brief at 64; Exhibit VNJ-7 at ¶ 62.

186 Verizon NJ Brief at 66.

Provisioning	84	84
Maintenance and Repair	67	67
Billing	69	69

With respect to the criticisms directed towards the KPMG testing and test results by others, Verizon NJ argued that the Board designed and directed a thorough evaluation by KPMG, that this testing was similar to, although more extensive than, previous tests conducted by KPMG, and that the Final Report largely speaks for itself. As the FCC has found in connection with previous Verizon 271 applications, Verizon NJ contended that the KPMG test results are persuasive evidence that its OSS satisfy the 271 requirements.[187]

The Advocate Position

The Advocate contended that commercial performance data is the preferred method of demonstrating the readiness of a 271 applicant's OSS. The Advocate opined that Verizon NJ is relying solely on KPMG's results and provides no evidence of its ability to "sustain a realistic level of demand in a competitive marketplace."[188] The Advocate argued that a commercial availability period should be required to allow the development of commercial results before the Board makes a recommendation on Verizon NJ's OSS readiness[189].

AT&T Position

AT&T contended that the KPMG testing was necessarily limited and that the Verizon NJ OSS must be evaluated in the real world, under commercial volumes, under a cross section of ordering scenarios.[190] AT&T argued that the KPMG test results are flawed because it used test orders rather than commercial transactions. It also alleged that KPMG did not properly account for the lack of "blindness" in testing, i.e., that Verizon NJ awareness of KPMG's identity could enable Verizon to skew its operations facilities to provide KPMG with more favorable service.[191]

With regard to volume testing, AT&T alleged that KPMG did not adequately test Verizon NJ's ability to manually handle orders in substantially increased volumes, or to provision, maintain or bill these greater volumes[192]. AT&T also argues that the service order processor ("SOP") in New Jersey is unique to Verizon NJ and has never been subject to large commercial volumes in a production environment.[193] Like the Advocate, AT&T urged that a commercial availability period should be completed before the Board issues a recommendation.

WorldCom Position

WorldCom joined AT&T in contending that "it is only through actual commercial usage of Verizon's OSS during a commercial availability period will the Board be able to determine that

187 Verizon NJ Reply Brief at 26-28; BANY 271 Order at ¶ 100; Verizon MA 271 Order at ¶ 46; Pennsylvania 271 Order at ¶ 31-34.

188 Advocate Initial Brief at 26.

189 Id. at 25-28.

190 AT&T Initial Brief at 37-41 Brief 40.

191 Ibid.

192 Id. at 38-40.

193 Id. at 39.

Verizon's OSS will work properly."[194] WorldCom stated that the KPMG volume testing included Verizon region wide volumes and that KPMG overstated the volumes tested.[195]

Discussion

While the Board would prefer more robust competition in New Jersey than exists today, the Board is persuaded by Verizon NJ's arguments that it has provided sufficient evidence of satisfactory OSS performance based upon the combination of commercial usage and KPMG test results. As previously stated, the FCC relies upon both types of information in its analysis, and the Board does so here as well. The Board invested 18 months on the KPMG test through "military style" testing to a zero defect conclusion. The test was conducted in a fashion similar to that employed by KPMG – and relied upon by the FCC – in several other Verizon states. CLEC participation was solicited and there has been ample participation. The test condition issues raised by AT&T were anticipated and accounted for by the Board and KPMG. Further, KPMG was made available to the parties at both a two-day technical workshop and at our subsequent formal hearings.

The Board concludes that the volume testing conducted by KPMG presented Verizon NJ's SOP with a greater than expected level of near term orders. The results of this volume testing were satisfactory. Although the KPMG volume testing did not extend in New Jersey (or elsewhere) to provisioning, maintenance and billing systems, these systems were subject to individual testing. Further, since they are shared with Verizon NJ retail operations, they are performing in volume today.

Clearly, a record of successful commercial operation is the most probative form of evidence for the compliance of Verizon NJ's OSS with Section 271 standards. However, CLEC order volumes in the state seem relatively modest to date, putting additional emphasis on the KPMG test results. These results are positive. To the Board's current knowledge, New Jersey is the first state to conclude the KPMG testing regime with the clean slate of no outstanding KPMG Exceptions or Observations. These results cannot be ignored, even in the face of limited CLEC order activity. The Board also notes that a "commercial availability period" was discussed with CLECs during the regularly scheduled Tuesday CLEC, KPMG, BPU Testing Informational Conference call of January 30, 2001, with no CLEC exhibiting interest. In addition, the Board has in place a system of performance measurements, performance standards and remedies for non-compliance to guard against back-sliding on the part of Verizon NJ's OSS. Given the foregoing, the Board FINDS that there is no need for commercial experience at this point to confirm the adequacy of Verizon NJ's OSS.

b. Order Processing

Verizon NJ's Position

Verizon NJ contended that it meets the FCC's standards for order processing. According to Verizon NJ, its OSS handles the orders presented by CLECs in a timely and accurate manner via mechanized (system flow through) or manual (National Market Center or NMC service representative) assisted processes.[196] It pointed to the C2C performance measurements for

194 WorldCom Initial Brief at 16.

195 Ibid.

196 Verizon NJ Brief at 66-69

order processing and the number of installation troubles as support for its claims. Verizon NJ also pointed out that its efforts to flow through more orders have been focused on the largest volume order types in New Jersey, reducing the number of transactions requiring manual assistance by NMC personnel. As a result, according to Verizon NJ, its overall order flow through rate (60%) is higher than the overall flow through rates in New York or Massachusetts when Ordering OSS was before those regulatory authorities for review.[197] Verizon NJ also pointed out that KPMG has tested its order flow through and found that the orders designed to flow through do, in fact, flow through.[198] Finally, although Verizon NJ indicated that it has not received forecasts of increased ordering activity in the near future, it stated that it has demonstrated its ability to meet the increased needs of CLECs as they have occurred in other 271-approved states.[199]

Verizon NJ stated that, when an order does not flow through, whether because it is not designed to flow through or because of CLEC error, Verizon NJ's NMC representatives undertake the entry of these orders[200]. Verizon NJ stated that it takes the level of flow through orders into account in developing its NMC force plans.[201] It argued that proof of its success in training and staffing the NMC is shown in the consistently strong results of the C2C measurements. According to Verizon NJ, these measurements demonstrate that orders are processed timely and accurately month after month[202]. They also indicate that Verizon NJ has the trained force available to handle orders of different types and is prepared for volume increases through a variety of means. Although Verizon NJ says it is interested in receiving accurate forecasts of expected CLEC ordering activity, Verizon NJ expressed its belief that it has demonstrated its ability to meet continuing CLEC needs.

With regard to the "as specified" ordering issue identified by ATX, Verizon NJ pointed out that ATX has not requested this type of ordering in the industry OSS Change Management process where proposals of this type are given consideration by Verizon and other CLECs.[203] Verizon NJ also stated that its use of " as specified" ordering for complex products is more than a matter of Verizon NJ versus CLEC convenience. Rather, Verizon NJ claimed that "as specified" ordering is required to ensure that the end user customer's resulting UNE Platform meets the CLECs requirements.[204]

Verizon NJ also stated that the process involved in converting from retail or resale service to a facilities-based UNE service is more than a simple change in the wholesale billing status, because it involves completely specifying the end user's records in terms of UNE facilities and provisioning the correct AIN (Advanced Intelligent Network) triggers to ensure that the resulting UNEs perform as requested and provide the CLEC with the appropriate billing records.

With respect to XO's two issues, Verizon NJ stated first that it has not refused to accept orders for high capacity facilities from XO, either in New Jersey or elsewhere. Verizon NJ stated that there is no issue between the respective parties here.[205] Verizon NJ addressed the document

197 Verizon NJ Brief at 67-68; Exhibit VNJ–8 at ¶¶ 26-34

198 Verizon NJ Brief at 68; Exhibit KPMG 1.

199 Verizon NJ Brief 68.

200 Id. at 67.

201 Id. at 71.

202 Id. at 69; Exhibit VNJ-7 at ¶¶ 87-94

203 Verizon NJ Reply Brief at 40.

204 Verizon NJ Brief at 78-79

205 Verizon NJ Reply Brief at 39; Exhibit VNJ-9 at ¶¶ 55-56.

provided by XO as proof of its claim by stating that that document shows an attempt by Verizon to help XO with its ordering, not a refusal to accept further commercial orders.[206]

Verizon NJ stated that XO's second issue has been resolved by Verizon NJ's use in New Jersey of the same procedures for CLEC-to-CLEC migrations as it uses in New York.[207] Verizon NJ observed that these migrations largely depend upon the behavior of the two CLECs involved and that it has stayed actively involved in the collaborative discussions to assist in developing and implementing the means of assuring a smooth transition from one CLEC to another. In these circumstances, Verizon NJ asserted that it is reasonable to apply special handling, called "project" handling, to these customer migrations.[208] Finally, Verizon NJ claimed that there has been no demonstration by XO, or any other party, that its current processes are flawed or inadequate to handle CLEC demand.[209]

AT&T Position

AT&T contended that Verizon NJ has not demonstrated either that its current level of UNE order flow-through is satisfactory or that it is ready to handle future order volumes.[210] AT&T notes that a comparison of current order volumes and flow-through rates in New York to current flow-through rates in New Jersey demonstrates both that order volumes and flow-through are higher in New York.[211] AT&T questioned whether Verizon NJ is ready for future increases in volumes, and, it pointed out that the NJ service order processor ("SOP") is a stand alone processor that is not used anywhere else in the Verizon footprint.[212] Therefore, AT&T maintained that performance in other states cannot be relied upon to predict future Verizon NJ performance.[213] Lastly, AT&T noted that KPMG did not review Verizon NJ's staffing plans for the likely higher levels of future manual order processing.[214]

ATX Position

ATX raised an issue with respect to the ordering mode required by Verizon NJ for BRI ISDN and FX UNE Platform arrangements.[215] ATX asserted that Verizon NJ requires it to employ "as specified" ordering that requires it to specify the details of the end user's desired service, rather than "as is" ordering which would require that Verizon convert the service from retail or resale without change from its own records. ATX maintained that "as specified' ordering is more cumbersome for it and gives rise to the potential for a higher level of provisioning error.[216]

206 Exhibit VNJ-9 at ¶¶ 55.

207 Verizon NJ Reply Brief at 39.

208 Ibid.

209 Ibid.

210 AT&T Initial Brief at 44-48.

211 Id., at 45.

212 Id. at 39, 46-47.

213 Id. at 46.

214 Ibid. Both AT&T and WorldCom have noted that Verizon NJ's level of "achieved flow-through" is below Board established standards. AT&T Initial Brief at 47; WorldCom Reply Brief at 8. While this may be a matter for consideration in the payment of performance remedies, the FCC has indicated that it does not regard even the absence of "achieved" flow -through metrics as an impediment to approving an applicant's 271 request. Pennsylvania 271Order at ¶ 48: "[c]ontrary to the claims of some commenters, we do not specifically require Verizon to provide data on its achieved flow through rate to determine that Verizon's OSS are capable of offering high flow through." See also Verizon MA 271 Order at ¶ 80.

215 ATX Brief at 8. ATX earlier addressed "as specified" ordering for PRI ISDN, but it appears that this UNE-P is available via "as is" ordering according to Verizon NJ. Exhibit VNJ 9 at ¶ 58. Thus, the ordering of PRI ISDN no longer appears to be in controversy.

216 ATX Initial Brief at 8.

XO Position

XO raised two ordering issues. First, it alleged that Verizon has refused to process its orders for high capacity facilities.[217] Instead, XO claimed that Verizon NJ insists that it submit test orders because of "ordering problems" that Verizon NJ observed in the past.[218] XO asked that any such Verizon NJ restraint be lifted.[219]

XO also asserted that Verizon NJ is insufficiently prepared to accomplish CLEC-to-CLEC migrations.[220] XO argued that the procedures for these migrations are under development in the industry collaborative in New York and should be employed here. In the absence of these procedures being adopted, XO claims that these migrations are at best difficult. XO also alleges that Verizon NJ's Decision to use special "project" handling to ensure the success of these migrations will not be sustainable if future volumes increase substantially.[221]

Discussion

The Board FINDS that Verizon NJ has shown both that it processes CLEC orders timely and accurately, and that it is ready to handle reasonably expected future volumes. Verizon NJ's current overall order flow through level means that more orders are being handled via mechanized processes than manually. However, where orders are processed manually, the performance data – verified by KPMG – appears to indicate that Verizon NJ has handled them satisfactorily.

The Board also FINDS that Verizon NJ has taken the steps that it can take to ensure that it is ready for increased UNE order volumes. We note that KPMG's test indicated that Verizon NJ's systems are capable of flowing-through a high percentage of CLEC orders.[222]

With respect to the issue raised by ATX to have the simpler "as is" ordering instituted, however, the Board shares the concern for the accurate provisioning and record keeping necessary to ensure end user satisfaction. As the record reflects, there is a process that ATX can use to have its request given consideration. We urge ATX to consider advancing its proposals in that manner. We also expect that Verizon NJ will assist ATX in the preparation of these orders upon request. In sum, we do not find that Verizon NJ's use of "as specified" ordering in these circumstances is contrary to its Section 271 obligations.

With respect to XO's two ordering issues, we agree with the position set forth by Verizon NJ. As to the ordering of high capacity facilities, the record before us shows that XO wants Verizon NJ to accept its orders and Verizon NJ says it will do so. Absent proof contrary to Verizon NJ's representations, we see no issue presented for our determination. With respect to CLEC-to-CLEC migrations, the Board concludes that Verizon NJ has adopted an appropriate approach of working with the CLECs in industry forums towards solutions and then implementing those solutions that are adopted. We encourage XO's involvement in those forums. At this time,

217 XO Initial Brief at 17.

218 Ibid.

219 Id. at 19.

220 Id. at 23-24.

221 Ibid.

222 Exhibit KPMG 1 pgs. 153-159.

however, there is no evidence to indicate that Verizon NJ is impeding any CLEC's opportunity to compete for the customers of other CLECs.

c. Completion Notices

Verizon NJ's Position

Verizon NJ argued that it has routinely exceeded the Board ordered measurements for Provisioning Completion Notice (PCN) functionality. [223]Concerning Billing Completion Notices (BCNs), Verizon states that 98% of the time, it delivered BCN's by noon the next business day after order completion in the billing system.[224] Verizon NJ added that it satisfied all KPMG OSS Test criteria for PCNs and BCNs.[225] Concerning the Board metric requiring the delivery of a BCN within 3 business days after the order completes in the SOP, Verizon contends that the measure should be within four days, not the Board ordered 3 days.[226]

MetTel's Position

MetTel was the only CLEC to challenge Verizon's performance. MetTel contended that it takes longer in New Jersey than in Pennsylvania to receive a BCN.[227] MetTel claimed that "the time required to receive 95% of the BCNs, after the order has been physically provisioned, is nearly 700% longer in New Jersey compared to Pennsylvania."[228] MetTel contended that its analysis calls into question Verizon NJ's claims that it has deployed the same, or virtually the same, systems in the two jurisdictions[229]

Discussion

The Board agrees with MetTel that timely and accurate completion notifications (PCNs and BCNs) are an integral part of provisioning because they represent the final confirmation that an order has been completed by Verizon NJ. With untimely or unsent BCNs, double billing can occur resulting customer confusion. In addition, if Verizon NJ's billing system has not been updated, the end user customer may have difficulty changing products and services since their service record might not match their physical service.

The Board has established several Carrier-to-Carrier Guidelines to measure the timely issuance of completion notifiers. These Guidelines were developed with input from the CLEC community through a collaborative process under auspices of the Board. Verizon NJ's metrics data and calculations, based upon the Board-ordered C2C standards, show that Verizon, for the most part, is meeting or exceeding, those standards. Furthermore, Verizon NJ's completion notifier data were validated and replicated by KPMG as part of the OSS testing effort and found to be compliant. Based upon the evidence in the record, the Board FINDS that Verizon NJ is performing satisfactorily, as required for this function.

d. Billing

223 Verizon NJ Brief at 73-75.

224 Id. at 74.

225 Id. at 73.

226 Id. at 74.

227 MeTel Initial Brief at 6; Exhibit MetTel-4 at 3.

228 Exhibit MetTel-4 at 3.

229 MetTel Initial Brief at 8.

Verizon NJ's Position

Verizon NJ asserted that the billing systems that it uses to accumulate and provide CLECs in New Jersey with usage billing information, including access records, are the same billing systems Verizon NJ uses for its own retail customers and for interexchange carriers. According to Verizon NJ, new functionality was added to the existing systems to accommodate the billing of new usage rate elements and new non-recurring and recurring charges to CLECs, and to produce the wholesale bill.[230]

DUF Records.

Verizon NJ indicated that it provides CLECs with daily usage feeds ("DUF") containing their call usage detail, and CLECs can receive the DUF via Connect:Direct or magnetic tape/cartridge.[231] In the first six months of 2001, according to Verizon NJ, it has created more than 94 million usage records in New Jersey, an 85 percent increase over 2000 volumes.[232] Verizon NJ also argued that its C2C performance data indicates that it has been providing DUF records to CLECs on a timely and accurate basis.[233]

Verizon NJ indicated that, far from establishing the accuracy of the MetTel claims, the data ultimately provided by MetTel demonstrated that its so-called "missing usage" records were actually caused by errors in MetTel ordering and record keeping. In many cases, according to Verizon NJ, MetTel did not receive the usage it expected because it did not establish itself as the end user's selected interLATA or intraLATA carrier when it prepared its orders to migrate the customer's local service.[234] In other cases, Verizon NJ stated that the data shows that MetTel is looking for usage records after it has lost the customer to another carrier, or overlooking the fact that it did receive that usage for the period before it lost the customer.[235] Verizon NJ stated that these are the same problems with MetTel ordering and record keeping that Verizon and the Pennsylvania Public Utility Commission ("PUC") observed when MetTel made these claims in the Pennsylvania 271 review proceeding, and which led the PUC to give them no persuasive weight.[236]

Verizon NJ acknowledged that some MetTel "DUF observations" may reflect an occasional provisioning error, but that there is a trouble ticket process for the correction of such errors.[237] Verizon also argued that the New Jersey C2C Reports verified by KPMG demonstrate that the level of Installation troubles (PR6-02-3140) for UNE-P orders is minimal (ranging from a low of 0.14% to *a* high of 0.30% for the period from April through September 2001) and always less than the level of retail installation troubles.[238] Verizon stated that these facts provide empirical refutation of MetTel's "analysis.[239]"

230 Exhibit VNJ 7 ¶ 129.

231 Verizon NJ Brief at 84.

232 Exhibit VNJ-7 at ¶ 132.

233 Ibid.

234 Exhibit VNJ -4 at ¶ 18; Verizon In Hearing Transcript Request – November 20, 2001 pp. 1567-1570.

235 Exhibit VNJ -14 at ¶ 19; Verizon In Hearing Transcript Request from November 20, 2001 pp. 1566-1567.

236 Verizon NJ Brief at 85.

237 Ibid.

238 Ibid.; Exhibit VNJ-14 at ¶ 21.

239 Ibid.

MetTel's Position

MetTel contended that it is not getting the appropriate records, based upon several analyses it conducted.[240] MetTel pointed to instances in which no DUF was received or instances in which open tickets remain unresolved.[241] MetTel denies that the missing or not received DUF is a result of failure to properly reflect the PIC of the subscriber and argues that Verizon NJ does not properly provide the information and should not get 271 approval.[242]

Carrier Billing.

As noted above, Verizon NJ asserted that it bills CLECs for the unbundled elements and resold services the CLEC purchased from Verizon NJ using the same systems as Verizon uses to bill its end user customers. According to Verizon NJ, historically, the company billed carriers using the same format as Verizon NJ uses to bill its end user customers. Billing data in these end user formats has been available to CLECs on paper and on CD-ROM. Up until September 2001, the paper bill was the only available "bill of record" in New Jersey, i.e., the official bill to the CLEC for payment of amounts due and for submitting claims for disputed amounts.[243]

Verizon NJ also responded to ATX, which raised an issue with respect to the carrier billing it receives. Verizon NJ stated that none of ATX's allegations of billing errors amount to an impairment in its ability to compete.[244] Specifically, Verizon NJ stated that ATX did not provide backup data to support its claim, and it declined to quantify these charges.[245] Verizon NJ asserted that it did provide such data, and it claimed that the data shows that these ATX allegations are directed to only 1% of its billing and to negligible amounts in controversy.[246]

KPMG Testing.

Verizon NJ also noted out that KPMG has verified its ability to provide nondiscriminatory billing to CLECs. As described by Verizon NJ, KPMG's evaluation of the Billing domain included tests of both billing procedures and actual bills generated by Verizon's CABS and CRIS systems. According to Verizon NJ, KPMG evaluated the billing work center and help desk support for CLECs, the process for producing and distributing the DUF, the process for producing and distributing carrier bills, and the process for CLECs to return usage if they believe it is erroneous. Finally, KPMG reviewed the accuracy and timeliness of both the DUF and the carrier bill.[247] Verizon NJ argued that KPMG evaluated 69 different test points and reported that it was satisfied with Verizon's performance for every Billing test point.[248]

According to Verizon NJ, during the KPMG test, KPMG reviewed the carrier bill in the Verizon NJ end-user format, which KPMG received on paper. The paper end-user formatted carrier bill

240 Exhibit MetTel- 4 at 4; MetTel Initial Bief at 9.pp.4.

241 MetTel Reply Brief at 15-17.

242 Id. at 13-15.

243 Verizon NJ Initial Brief at 8.

244 Ibid.

245 See Exhibit VNJ-16 (ATX Interrogatory responses 35-38).

246 Exhibit VNJ- F at ¶¶ 100-101.

247 Verizon NJ Brief at 87.

248 Exhibit KPMG – at 305-346. In the course of its evaluation, KPMG issued 8 observations and one exception concerning Verizon NJ's carrier bill. Consistent with the "military-style" nature of the test, Verizon responded to KPMG's observations and exceptions, and implemented all necessary fixes. See Exhibit VNJ-7 at 141-144; November 16, 2001 transcript at 10.

was the exclusive "bill of record" in New Jersey at that time.[249] Verizon NJ stated that it rendered bills to KPMG, acting as a CLEC, for the products and services KPMG purchased from Verizon NJ as part of the KPMG test. KPMG validated the bills sent to it just as a CLEC would – that is, KPMG compared the charges on the bill to the products and services it had ordered and to the prices it expected to be charged for those items to see if the charges on the bill were correct. Verizon NJ stated that KPMG also compared the usage charges on the bill and on the DUF to the calls it had made on the lines on its account to see if the bill appropriately reflected that usage.[250] According to Verizon NJ the results of this detailed review showed that Verizon NJ's paper bill passed every KPMG test point.

C2C Performance Results.

Verizon NJ maintained that the results shown on the broad array of C2C billing measurements established in New Jersey demonstrate that it is meeting these established performance standards.[251] Verizon NJ asserted that, while it has missed an occasional billing metric, those misses do not detract from the pattern of good performance shown by the totality of metrics for the period from April through October 2001.[252] Verizon NJ argued that AT&T has focused too narrowly on one metric miss, and ignored the overall pattern of successful billing performance shown in all of the metrics, and the other evidence on the record – including the KPMG testing.[253]

Electronic BOS BDT Billing.

In late August, Verizon NJ indicated that CLECs could also elect to receive an electronic bill in the Billing Output Specification ("BOS") Bill Data Tape ("BDT") format as its bill of record.[254] Verizon claimed that this bill reflected the application in New Jersey of the improvements that Verizon had made in the BOS BDT formatted bill in Pennsylvania, because Verizon NJ and Verizon PA share the same billing systems, as well as New Jersey specific changes.[255] Verizon NJ also stated that it has implemented a BOS BDT internal review process in New Jersey, as it had earlier implemented in Pennsylvania,[256] to ensure that its BOS BDT bill balances internally and that it matches the Verizon NJ paper bill that KPMG found to be complete and accurate, before the BOS BDT bill is released to the CLEC.[257]

Verizon NJ stated that, to assure itself that it was producing a high-quality electronic bill, it engaged the independent accounting firm of PricewaterhouseCoopers, L.L.P. ("PwC") to conduct two detailed reviews of both the paper and the BOS BDT formatted bills, akin to the similar reviews PwC had performed on Verizon PA bills.[258] Verizon NJ noted that both independent PwC examinations were conducted on actual CLEC bills, not test bills.[259]

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249 Exhibit VNJ-7 at ¶ 138.

250 Exhibit KPMG-1 at -341, Tests TVV 8-1 through 8-6.

251 Verizon NJ Reply Brief at 47.

252 Ibid.

253 Verizon NJ Reply Brief at 47-48.

254 Exhibit VNJ-7 at ¶ 151

255 Verizon NJ Brief at 88.

256 Pennsylvania 271 Order at ¶ 20..

257 Exhibit VNJ-7 at ¶ 152 and OSS Declaration Attachment 312

258 Exhibit VNJ-6 and Attachments 501 and 502.

259 Verizon NJ Reply Brief at 48.

Verizon NJ contended that the results of both reviews in New Jersey underscored the commercial utility of the BOS BDT bill, just as the FCC had found with respect to Verizon PA's BOS BDT bills.[260] Verizon NJ also pointed to its commercial experience with CLECs receiving the BOS BDT bill as evidence of the electronic bill's quality.[261] Verizon stated that, although more than 44 CLECs are receiving the BOS BDT formatted bill, its records demonstrate that Verizon NJ receives far fewer trouble tickets concerning its provision of BOS BDT bills to CLECs than it did in Pennsylvania, and that the vast majority in New Jersey involve only a request that Verizon resend BDTs or help the CLEC to "read" the data.[262] Verizon NJ claimed that the record also shows that Verizon NJ has quickly resolved these and other complaints.[263] Thus, it alleged that the New Jersey commercial data demonstrate the high quality of the BOS BDT bills provided to CLECs by Verizon NJ.[264]

Verizon responded to both WorldCom and ATX issues concerning Verizon NJ's electronic BOS and BDT formatted bill. Verizon NJ argued that the most significant fact is that neither commenter acknowledges that the FCC has already reviewed and approved Verizon's BOS BDT formatted bill as meeting the requirements of the Section 271 in Pennsylvania. According to Verizon NJ.
the record shows that its BOS-BDT formatted bill similarly meets those requirements in New Jersey as well.

With respect to WorldCom, Verizon NJ stated that its arguments are directed only towards the PwC studies, not the BOS BDT bills themselves. Although WorldCom argues that the PwC review did not address the accuracy of the BOS BDT formatted bills, Verizon NJ stated that this was not necessary in New Jersey, just as it was not necessary in Pennsylvania. In both cases, KPMG had exhaustively studied the paper end-user formatted bill, and the PwC BOS BDT reviews demonstrated that the Verizon electronic BOS BDT formatted bills were comparable to the paper bills that the KPMG has already found were both accurate and complete. Further, by comparison to the BOS BDT formatted bill approved as part of Verizon PA's 271 application to the FCC, Verizon NJ stated that its bill uses the same format, a lesser number of limited exceptions to its "sameness" to the paper bill, and a smaller amount of necessary manual balancing record adjustments (0.72%).[265] Verizon NJ argued that the FCC has concluded that its use of a manual quality review process is not a weakness, as argued by WorldCom, but a strength assuring that it delivers a quality electronic bill.[266] Verizon NJ stated that the record evidence shows that it delivers its electronic bills to CLECs on time, even including the time it needs to accomplish the manual review. Finally, Verizon NJ stated that the balancing records it inserts are given as adjustments to the CLEC in the following months bill.[267]

Verizon responded to the ATX claim that the BOS BDT formatted bill improperly aggregated monthly-based charged at the end office level, rather than individually for each line number.[268] Verizon NJ argued that ATX does not challenge the fact that its presentation of billing data is in compliance with industry BOS BDT standards.[269] Verizon NJ stated that this aggregation was

260 Pennsylvania 271Order at ¶¶ 26, 33-39.

261 Verizon Reply Brief at 48-49.

262 WorldCom Initial Brief at 52.

263 Ibid.

264 Ibid.

265 Id. at 50.

266 Id. at 51.

267 Ibid.

268 Id. at 52-53.

269 Id. at 53.

implemented at CLEC request in order to reduce the size (number of records) of the individual BDTs.[270] It also claimed that ATX has not sought to change the applicable standards or the perspective of other CLECs in industry forums or collaboratives -- changes that would be needed if Verizon is to continue to provide for OSS uniformity as detailed in its Plan of Record filed with the FCC.[271] Further, Verizon NJ stated that it is providing the same formatted UNE-P in New Jersey as elsewhere, and that ATX's claim to the contrary was likely based on a comparison of its New York Resale bill to its New Jersey UNE-P bill.
Finally, Verizon stated that ATX is mistaken in its claim that it cannot reconcile individual DUF records with the aggregated BOS BDT billing records. Verizon NJ stated that this reconciliation can be done on an end office level by using the inventory of all telephone numbers on the UNE Platform bill, which are organized by end office/by telephone number with the usage detail, which is provided at the telephone number level via the DUF. Verizon NJ also indicated that it has contacted ATX to help with conducting this reconciliation.

With regard to MetTel's claims, Verizon NJ countered that many of the problems experienced by MetTel are self-inflicted. Verizon contended that in some cases MetTel did not receive the appropriate usage because MetTel did not change the appropriate carrier PIC when the customer migrated to MetTel for local service. In other cases Verizon contends that MetTel did not receive usage because the customer had left MetTel.[272]

AT&T's Position

AT&T argued that Verizon NJ has not met the Board's standards for billing as expressed in the C2C guidelines.[273] Specifically, it pointed to measurement BI-3, and notes that Verizon NJ frequently makes a larger percentage of adjustments to wholesale bills than it does to retail bills.[274]

ATX's Position

ATX argued that there are numerous problems in its bills and that it expends considerable resources to work them out with Verizon.[275] ATX also complained of one aspect of billing detail aggregation in the BOS BDT formatted bill. Specifically, ATX contended that Verizon NJ's BOS BDT improperly aggregates charges and that it therefore loses the line number detail that it needs to reconcile the BOS BDT formatted bill with the DUF records that Verizon NJ provides.[276] ATX claimed that its affiliated company in New York does not experience this problem because the Verizon New York bill is formatted differently.

MetTel's Position

MetTel raised a concern that it was not receiving the appropriate records. Specifically, MetTel claimed that is it experiencing missing or delayed local usage as well as missing or misdirected long distance usage.[277]

270 Exhibit VNJ-8 at ¶ 94.

271 Verizon NJ Reply Brief at 53.

272 Verizon NJ Brief at 84-85.

273 AT&T Initial Brief at 42.

274 Ibid.

275 ATX Initial Brief at 13-14.

276 Id. at 16.

277 Met Tel Initial Brief at 5-11.

WorldCom's Position

WorldCom argued that the PwC review does not demonstrate the quality of Verizon NJ's electronic bills and that commercial results demonstrate that CLECs are experiencing problems.[278] WorldCom argued that the PwC review did not address the accuracy of the BOS BDT formatted bills. Therefore, it argued that the Board cannot be confident of the quality of the electronic bill, notwithstanding PwC's reviews. WorldCom argued that the manual review process inherently increases the risk of billing errors. Third, WorldCom argued that the Verizon NJ exceptions in the assertions verified by PwC renders these assertions suspect. Among these areas of concern, WorldCom asserted that PwC was not able to show that the Verizon NJ BOS BDT formatted bill was different from the paper bill in ways that are consistent with industry standards and Verizon NJ's Plan of Record.[279] WorldCom also pointed out that portions of the bill were not re-calculable by PwC. Finally, WorldCom claimed that the trouble ticket data presented by Verizon NJ shows that CLECs are experiencing considerable problems with the BOS BDT bill in commercial practice. WorldCom concluded that all of these factors should cause the Board to withhold its favorable recommendation on Verizon NJ's 271 request.

Board Findings

Billing is an important aspect of the competitive marketplace. Verizon NJ needs to issue timely and accurate daily usage records to the CLECs. The C2C data and the KPMG testing indicate that it meets this obligation. We take note that only one CLEC has disputed this conclusion. It appears to us that, if missing or delayed usage were a systemic problem, it would surely be impacting more than one CLEC.

Similarly, Verizon NJ must render timely, accurate and auditable carrier bills to be paid for Verizon-provided services to its CLEC customers. It is undisputed that electronic billing is an essential component of the billing process as established in the record. Without adequate electronic billing, CLECs may be unable to verify the accuracy of Verizon NJ's wholesale bills in a timely manner.

The record shows that Verizon NJ has taken numerous steps to facilitate the availability of accurate electronic billing. Verizon NJ's electronic bill relies on its paper bill, which KPMG has found to be acceptable. Verizon NJ allows CLECs to choose the BOS-BDT bill format as the official bill of record. Previously, the paper format was the exclusive bill of record in New Jersey.

The commercial data presented by Verizon NJ, the general absence of specific CLEC claims of flaws in this electronic billing vehicle, and the independent third party reviews conducted by PricewaterhouseCoopers, persuade us that the Verizon NJ electronic BOS BDT formatted bill meets the standards for section 271 billing compliance established by the FCC.

278 WorldCom Initial Brief at 17.

279 Ibid.

The Board FINDS that Verizon NJ is providing nondiscriminatory wholesale billing based upon the record evidence presented including actual performance and the findings of KPMG and PWC, subject to the following two conditions. It is important to the continued expansion of a robust competitive marketplace that Verizon provide reliable electronic bills to CLECs that buy its wholesale services in order to compete. Verizon has implemented an internal quality assurance review process to ensure that its electronic bills in BOS BDT format balance internally and that they match the paper bills (which KPMG found to be accurate) before the electronic bills are released to the CLECs. This process, initially applied in Pennsylvania, was introduced in New Jersey in August 2001. As Verizon improves the software that it uses to generate these bills, it is expended that the need for this manual review and balancing process will continue to diminish. Because of the importance of this issue, however, the first condition the Board will set forth is that Verizon is required to retain the manual review and balancing procedures in New Jersey until it has confirmed to Board Staff's satisfaction that manual balancing records are not required to produce adequately balanced BOS BDTs for CLECs. The Board will further condition its findings of OSS (and Checklist item 2) compliance on the requirement that Verizon include electronic billing metrics in the New Jersey Carrier-to-Carrier Guidelines, and the New Jersey Incentive Plan, effective in the February 2002 data month that are identical to those included in the Pennsylvania jurisdiction. Specifically, the Pennsylvania billing metrics for timeliness (BI-2) and accuracy (BI-3) must be included and are in addition to the existing paper bill metrics. Verizon New Jersey is also to file with the Board, and serve all TSFT participants, the C2C Guidelines, for these two (2) metrics within ten (10) days. All exclusions, standards and report dimensions are to mirror the Pennsylvania metrics.

e. CLEC Support

As stated above, no party takes issue with Verizon NJ's demonstration that it has satisfied its 271 obligations with respect to OSS Change Management.[280] The Board agrees that the record shows that Verizon NJ satisfies its change management responsibilities. Similarly, no party takes issue with Verizon NJ's demonstration that it has satisfied its 271 obligations with respect to technical assistance that it renders to CLECs in the form of handbooks, training or documentation.[281] However, MetTel takes issue with one particular aspect of Verizon's CLEC support function, specifically the resolution of its trouble tickets by the Wholesale Customer Care Center (WCCC).

Verizon NJ Position

Verizon NJ stated that the WCCC has been established as the single point of contact to address for all CLEC questions concerning status notifiers (the "PON Exception Process" described below), reports of systems issues (such as system outages, passwords, software application problems, and user questions), to provide timely notification to the CLEC of system events where necessary, and to ensure that any system issues are resolved expeditiously.[282] Verizon NJ reported that, from January through June 2001, it handled an average of over 3,400 calls each month at the WCCC. This call volume includes general inquiries, inquiries or status on previously opened tickets, as well as new inquiries. About half of these resulted in the opening of a trouble ticket to resolve a new problem or inquiry according to the company. Approximately 60 percent of the tickets opened in 2001 were resolved within a day according to Verizon NJ. In addition, the company claims that others are more complex and may require

280 Verizon NJ Reply Brief at 54

281 Ibid.

282 Exhibit VNJ 7 at ¶ 182.

extensive analysis, such as PON Exception tickets, each of which can have hundreds or thousands of PONs to research and resolve.[283]

As explained by Verizon NJ, the WCCC has established a process for handling PON Exceptions (trouble tickets concerning a CLEC report that it has not received status notifiers it expected to see) in response to "missing notifier" issues that arose in early 2000 in New York. If a CLEC believes a status notifier is delayed or missing, the CLEC calls the WCCC to open a trouble ticket and then submits a file containing specified information about the relevant PONs to the Center. In response to the itemized list of PONs from the CLEC, Verizon stated it provides the CLEC with the status of each PON, and if the requested notifier has been generated, resends the notifier to the CLEC. The WCCC generally provides the status and resends the notifier within 3 business days, at which time the ticket is considered cleared. However, if the status notifier has not been produced because the PON has not reached the business stage to produce the notifier, Verizon NJ stated it will determine if corrective action is required, either by Verizon NJ or the CLEC, to move the PON further in the business process and subsequently to produce the requested notifier.[284]

According to Verizon NJ, the record reflects that, for the period January through August 2001 in New Jersey, CLECs reported missing notifiers for 98 PONs, representing 0.03% of PONs submitted during that time.[285] Furthermore, Verizon NJ stated that it cleared 100% of these PONs within 3 business days by providing the CLEC with the status of the PON and the requested notifier when it existed.[286]

MetTel Position

MetTel alleged that Verizon NJ only resolved 60% of its trouble tickets within three days.[287] MetTel alleged that Verizon NJ's response to trouble tickets is "seriously sub-standard" because the trouble tickets submitted by MetTel are not resolved within a commercially reasonable 3 business days.[288]

Board Findings

The Board FINDS that Verizon meets its responsibilities with respect to CLEC support, including the administration of trouble tickets by the WCCC. We note that MetTel has not shown why we should conclude that 3 days is the reasonable commercial standard for resolving trouble tickets. Rather, we agree with Verizon NJ that it is reasonable for it to close certain inquiries on the same day they are received, but that others will necessarily take more time to resolve. We note that no other CLEC made any claims about the performance of Verizon NJ's WCCC in addressing trouble tickets. Further, we note that KPMG examined the WCCC's procedures and performance as part of its evaluation of Verizon NJ's OSS. KPMG found that Verizon satisfied all test criteria. The WCCC's role and performance was also evaluated in connection with other test domains and, in each case, KPMG was satisfied.

4. Overall Conclusion Regarding OSS

283 Ibid.

284 Exhibit VNJ 7 at ¶¶ 183-184.

285 Exhibit VNJ 9 ¶ 76.

286 Ibid.

287 MetTel Initial Brief at 11.

288 MetTel Brief, p.11.

Based upon our review of each area of Verizon NJ's OSS, The Board FINDS that with the inclusion of electronic billing metrics and quality assurance processes it meets the FCC's requirements for 271 approval. The results of our independent third party testing, where, through the course of military style testing, Verizon NJ met every KPMG test criteria, confirms that conclusion.

D. Checklist Item 3 -- Poles, Ducts, Conduits, and Rights-of-Way

1. Description of Checklist Item

Pursuant to Section 271(c)(2)(B)(iii), Verizon NJ is required to provide nondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by it at just and reasonable rates in accordance with the requirements of Section 224 Communications Act of 1934 as amended by the TA-96. [289]

2. Standard of Review

Section 271(c)(2)(B)(iii) requires a BOC to provide "[n]ondiscriminatory access to the poles, ducts, conduits, and rights-of-way owned or controlled by the [BOC] at just and reasonable rates in accordance with the requirements of section 224. . ."[290] Section 224, in turn, requires a utility to "provide a cable television system or any telecommunications carrier with nondiscriminatory access to any pole, duct, conduit, or right-of-way owned or controlled by it."[291] Section 224(c)(1) states that "[n]othing in [section 224] shall be construed to apply to or to give the Commission jurisdiction with respect to rates, terms, and conditions, or access to poles, ducts, conduits, and rights-of-way as provided in subsection (f), for pole attachments in any case where such matters are regulated by a State.[292] The FCC has issued notice that New Jersey regulates pole attachments.[293]

3. Summary of the Evidence Before the Board

a. Verizon NJ

Verizon NJ stated that it offers telecommunications carriers access to poles, ducts, conduits and rights-of-way at rates, terms and conditions set in its standard licensing agreement. Interconnection agreements also offer telecommunications carriers access to poles, ducts, conduits and rights-of-way on rates, terms and conditions stated in the standard licensing agreement.[294]

289 47 U.S.C. §271(c)(2)(B)(iii).

290 Ibid.

291 47 U.S.C. §224(f)(1).

292 47 U.S.C. §224(c)(1).

293 Public Notice – States That Have Certified That They Regulate Pole Attachments. 7 FCC Red. 1498 (1992).

294 Checklist Declaration at ¶¶113-114.

From January through June 2001, Verizon NJ stated that it provided 271 licenses for 2,035 pole attachments. During the same period, Verizon NJ provided 25 licenses for access to 133,063 feet of conduit. As of June 30, 2001, Verizon NJ was providing over 1,062,000 pole attachments and access to over 1,868,000 feet of conduit. Pole attachments were provided to 15 telecommunications carriers, 57 cable television companies, and 111 other parties. Conduit access was provided to 15 telecommunications carriers, 30 cable television companies, and 9 other parties. Verizon NJ stated that no carrier had requested access to Verizon NJ's private rights-of-way.[295]

According to Verizon NJ, access to poles, ducts, conduits and rights-of-way is provided on a "first come, first served" basis through a two step process: first, upon written request, Verizon NJ provides access to information about the location of its facilities; and second, it processes each application using the same standards of safety, reliability, capacity, and engineering that it applies to its own projects.[296]

From April through June 2001, Verizon NJ noted that it received 16 requests from telecommunications carriers for access to Verizon NJ records regarding poles, ducts, conduits, rights-of-way and associated facilities. According to Verizon NJ, access to records was made available within ten business days of the request for 100% of requests received.[297]

From April through June 2001, Verizon NJ received 49 applications from telecommunications carriers for access to poles, and 38 applications from telecommunications carriers for access to ducts and conduits. During the same period, 100% of Verizon NJ's responses to applications were provided within 45 days of receipt of the application, as stated by Verizon.[298]

Make-ready work and related costs apply to a request for access if a survey has shown that spare capacity is not available, but that a telecommunications carrier's request for access can be accommodated by performing make-ready work, according to Verizon NJ. Make-ready work may include the clearing of obstructions and the rearrangement, transfer, replacement, removal or modification of Verizon NJ-owned facilities.[299] The company goes on to state that the requesting carrier is charged only for work necessary to prepare facilities for its attachments and occupancy.[300] During the period from December 2000 through May 2001, Verizon NJ noted that it was able to use existing spare capacity to satisfy approximately 57% of applications for access to poles and conduits for the placement of telecommunications facilities, without the need for any make-ready work.[301]

Make-ready work is scheduled on a non-discriminatory basis for Verizon NJ and for telecommunications carriers, according to the company. Work authorization details are evaluated, and work is scheduled based upon factors such as job type, size, and due date, without regard to the requesting carrier's identity. Before beginning make-ready work on poles, ducts, conduits or rights-of-way that contain facilities of existing licensees, Verizon NJ stated that it provides sixty days prior notice to the existing licensees.[302] Verizon NJ stated that it

295 Checklist Declaration at ¶¶112, 127.

296 Checklist Declaration at ¶¶115-126.

297 Checklist Declaration at ¶117.

298 Checklist Declaration at ¶120.

299 Checklist Declaration at ¶¶119, 121.

300 Checklist Declaration at ¶122.

301 Checklist Declaration at ¶124.

302 Checklist Declaration at ¶123.

uses the same employees and independent contractors to perform make-ready work for itself and requesting carriers. Under the terms of Verizon NJ's labor agreements, make-ready work on fiber optic plant must generally be performed by Verizon NJ union employees. Conduit make-ready work that involves construction or repair of ducts may be performed by a contractor selected by Verizon NJ or by a contractor selected by the requesting carrier and working under the supervision of Verizon NJ, according to the company.[303] As of August 2001, a construction workforce of approximately 430 Outside Plant Technicians ("OPTs") was available in New Jersey. Verizon also states that, increases in demand for make-ready work can be met by temporarily relocating work crews to geographic areas experiencing increased workloads, and by assigning crews to work overtime as necessary.[304]

From January through June 2001, Verizon NJ completed make-ready work for 28 applicants within an average of 97 days. During the same period, Verizon NJ completed its own make-ready work within an average of 127 days.[305] Verizon NJ accordingly stated that it provides applicants with "better than parity service."[306]

b. Other Parties' Positions

Claims by RCN Telecom Services, Inc. that Verizon NJ failed to meet this checklist item have been withdrawn.[307] No other party has contended that Verizon NJ has failed to meet its checklist obligations to provide non-discriminatory access to poles, ducts, conduits and rights-of-way that Verizon NJ owns or controls.

4. Conclusion

Based on the record evidence, the Board FINDS that Verizon NJ has demonstrated that it is providing nondiscriminatory access to its poles, ducts, conduits and rights-of-way at just and reasonable rates, terms, and conditions in accordance with the requirements of Section 224 and has satisfied the requirements of Checklist Item 3.

E. Checklist Item 4 – Unbundled Local Loops

1. Description of Checklist Item

Section 271(c)(2)(B)(iv) of TA-96 requires that Verizon NJ provide local loop transmission from the central office to the customer's premises, unbundled from local switching or other services.[308] Verizon NJ has an obligation to provision different types of loops, including two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide service such as Integrated Services Digital Network ("ISDN"), Asymmetrical Digital Subscriber Line ("ADSL"), High-bit-rate Digital Subscriber Line ("HDSL"), 1.544 Mbps digital ("DS1-level") signals, and 45 Mbps digital ("DS-3 level") signals.[309] A subloop unbundled offering, line sharing, and line splitting are all

303 Checklist Declaration at ¶122.

304 Checklist Declaration at ¶127.

305 Checklist Declaration at ¶125.

306 Ibid.

307 See letter from Philip Passanante, Counsel for RCN Telecom Services, Inc., to Frances L. Smith, Esq., Board Secretary, dated November 2, 2001.

308 47 U.S.C. § 271 (c)(2)(B)(iv)

309 Verizon Pennsylvania Order, Id., Appendix C at ¶ 48.

included within the scope of Verizon NJ's obligation to provision and maintain unbundled loops.[310] Loops must be provisioned in a non-discriminatory manner.[311]

2. Standard of Review

The FCC will examine Verizon NJ's performance in the aggregate (i.e., by all loop types) as well as its performance for specific loop types. [312] In doing so, the FCC looks for any patterns of systemic performance disparities that have resulted in competitive harm or otherwise denied competing carriers a meaningful opportunity to compete.[313] Primary reliance is placed on certain specific activities. With respect to new loops, the FCC reviews Verizon performance on average completion intervals, missed installation appointments, trouble reports, and mean time to repair measures.[314] With respect to access to xDSL-capable loops, a critical pre-ordering activity is timely access to loop information. This activity is measured in terms of timeliness of Verizon NJ's responses to mechanized loop database queries as well as timeliness of Verizon NJ's responses to manual loop qualification and engineering record requests.[315] In addition, the FCC has identified the following activities as critical to competition for standalone xDSL: whether Verizon NJ timely returns firm order confirmations, whether Verizon NJ misses installation appointments, how long on average it takes Verizon NJ to provision an order, how many x-DSL loops provisioned to CLECs need repair during the first 30 days, how long on average it takes Verizon NJ to repair a troubled xDSL loop, and how often CLECs have to make repeated requests for xDSL loop repairs.[316] The FCC examines similar measures when it reviews a BOC's performance on Line-Shared Loops and High Capacity Loops.[317]

3. Summary of the Evidence Before the Board
a. Verizon NJ

Verizon NJ claimed that the evidence in its Checklist Declaration (Checklist Declaration) and its Reply Checklist Declaration (Reply Checklist Declaration) demonstrate that it complies with its obligations under Checklist Item 4. Verizon NJ asserts that it has shown that it has a concrete and specific legal obligation to furnish loops and that it is currently doing so in the quantities that competitors reasonably demand and at acceptable levels of quality.[318] Verizon NJ stated that through June 2001, it had in service approximately 67,300 loops, including more than 55,800 stand-alone loops (new loops and hot cuts) and nearly 11,500 loops provided as part of

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310 Id. at ¶¶ 50-52.

311 Id. at ¶ 49.

312 Verizon Massachusetts Order, at ¶ 76.

313 Verizon Pennsylvania Order, . at ¶ 77.

314 Verizon Massachusetts Order at ¶ 162.

315 Verizon Pennsylvania Order ¶ 45; Verizon Massachusetts Order at ¶¶ 54-60.

316 Verizon Massachusetts Order Id. at ¶¶ 135-153.

317 Id. ¶¶156, 163-173.

318 Checklist Declaration at ¶¶ 130-133.

UNE-Ps that include switching and transport elements.[319] The record reflects that during April through June 2001, Verizon NJ worked 3,432 hot cut orders.[320] From April through June 2001, Verizon NJ provisioned 3,599 stand alone xDSL loops.[321] As of June 2001, Verizon has 15 interconnection agreements with line sharing provisions in New Jersey. According to Verizon NJ, although volumes are still low, volumes have increased somewhat, and Verizon NJ has provisioned approximately 1,870 line sharing arrangements as of June 1, 2001, an increase from approximately 65 at the end of the year 2000.[322]

Verizon NJ, relying upon performance data from the Carrier-to-Carrier Reports, and other studies, claimed that it has provided good service on the majority of all types of loops provided to CLECs.[323] It also claimed that it has satisfied its line sharing, line splitting and subloop unbundling obligations,[324] as well as its obligations to provide CLECs access to loop information.[325]

b. AT&T

In its initial testimony, AT&T claimed that Verizon NJ is not providing good service to CLECs on UNE loops.[326] In support of this allegation, it states that Verizon NJ missed a number of provisioning metrics or submetrics in the August 2001 performance report. AT&T further stated that Verizon NJ's alleged discriminatory performance included its failure to provide parity service with respect to the intervals offered to CLECs for hot cut loops and the intervals in which Verizon NJ completed the hot cuts.[327] AT&T also complained about the lack of evidence from Verizon NJ regarding the availability of line splitting.[328]

c. Covad

In its initial testimony, Covad asserted that it examined Verizon NJ's performance under the DSL stand-alone metrics for June and July 2001 and that a review of this data indicated that Verizon NJ was providing substandard and discriminatory service to CLECs.[329]

d. MCI/WorldCom

In its brief, MCIW claims that Verizon NJ's performance on several UNE provisioning metrics demonstrates that Verizon NJ has not satisfied Checklist Item 4.[330]

e. XO

319 Id. at ¶ 134.

320 Id. at ¶ 150.

321 Id. at ¶ 160.

322 Id. at ¶ 184.

323 See Id. at ¶¶ 135-175,Checklist Declaration Attachments 208, 209, .210, 211, 212; Measurements Declaration Attachments 402, 406.

324 Id. at ¶¶ 176-210.

325 Id. at ¶¶ 153-159.

326 OSS Declaration of Mason Fawzi, Robert J. Kirchberger and E. Christopher Nurse for AT&T, at ¶¶ 86-87.

327 Id. at ¶¶86-87.

328 Id. at ¶¶45-49.

329 Declaration of Michael Clancy for Covad, at ¶¶6-11

330 MCI/WorldCom Brief at 24.

In its brief, XO claimed that Verizon NJ's policy, under which Verizon NJ rejects UNE orders on the claimed ground that "no facilities are available," is discriminatory.[331] XO claimed that Verizon NJ asserts that "facilities are unavailable" when in fact in some instances all that is necessary to provide such facilities is for Verizon to perform minor work. XO argues that this Verizon NJ policy is an unreasonable impediment to local competition.[332]

XO also complained that Verizon NJ refuses to convert circuits to EELs when those circuits are being provisioned using facilities that also provide special access or other services provided pursuant to Verizon's FCC tariff.[333] In addition, XO asserted that Verizon NJ unreasonably imposes termination liability for converting tariffed services to UNEs.[334] XO claimed that these penalties are unjustified.

f. Cablevision Lightpath

Cablevision Lightpath asserted that Verizon currently does not offer competitors access to critical network elements that facilities-based carriers need, such as dark fiber and expanded extended loops ("EELs"), in a nondiscriminatory manner that is substantially similar to tariffed offerings that Verizon makes available to competitors in other states.[335] Cablevision Lightpath claimed that because these issues were not addressed when the Board rendered its decision in the UNE proceeding at its November 20, 2001 Agenda Meeting, there is no evidence as to Verizon's present ability to timely and fully comply with the Board's new terms and conditions for these elements.[336]

4. Discussion

Having reviewed the relevant FCC 271 precedents and the evidence and arguments presented herein, the Board concludes that Verizon NJ provides unbundled local loops in accordance with Checklist Item 4 and the FCC rules. The Board concludes that when Verizon NJ's performance for all loops is considered, including its performance on voice grade loops, hot cuts, xDSL-capable loops, digital loops, EELs and high capacity loops, Verizon NJ provides satisfactory service. Verizon NJ has also demonstrated that it adequately provisions line-sharing and line-splitting, and meets its subloop unbundling obligation. Furthermore, the Board concludes that it provides access to loop makeup information in compliance with the FCC's rules, and the requirements of this Board.

In reaching these conclusions, the Board notes that the parties that commented on this checklist item have failed to raise any significant issues related to the voice grade loops that comprise the overwhelming majority of loops ordered by CLECs and provisioned by Verizon NJ. A review of Verizon NJ's performance on the relevant performance metrics demonstrates that Verizon NJ's provisioning and maintenance and repair of UNE loop are satisfactory for the period under review. Thus, as a whole Verizon NJ's performance on UNE loops is good. In short, no evidence exists that there are patterns of systemic performance disparities that have resulted in competitive harm or that Verizon NJ has otherwise denied CLECs operating in New Jersey the ability to compete.

331 XO Brief, at 12.

332 Id. at 10.

333 Id. at 12-17.

334 Id. at 18-19.

335 Cablevision Lightpath Brief, at 19-20.

336 Id. at 20-21.

The Board is not persuaded by the comments of MCI/WorldCom, XO and Cablevision Lightpath that Verizon NJ fails to comply with this checklist item. Rather, the Board finds that Verizon NJ has sufficiently addressed each of the issues raised by the three CLECs. First, as noted above, MCI/WorldCom's allegations regarding Verizon NJ's performance on some UNE provisioning measures does not demonstrate noncompliance with this checklist item when the record is reviewed in its entirety. No requirement exists that Verizon NJ have perfect metric performance and, in fact, the Incentive Plan approved by the Board sets a high standard, but not a "zero-defects" one.

Second, as to issues raised by XO regarding High Capacity Loops and EELs, the Board finds that Verizon NJ meets its unbundling obligation by providing high capacity loops where facilities are available. The Board agrees with Verizon NJ that it meets its obligations, where most, but not all, the necessary facilities are available and the loop can be activated without the need for additional construction or equipment.[337] Additionally, in the Pennsylvania 271 proceedings the FCC rejected arguments that Verizon's policies and practices concerning the provisioning of high capacity loops violate either its unbundling rules or warrants a finding of Checklist noncompliance.[338] The FCC noted that new interpretative disputes concerning the precise content of an incumbent LEC's obligations to its competitors, disputes not yet addressed by the FCC's rules and not involving per se violations of the Act or its rules, are not appropriately dealt with in the context of section 271 proceeding.[339] There also is no merit to XO's arguments concerning the alleged unavailability of EELs or the unreasonable imposition of termination liability for converting tariffed services to UNEs. The Board agrees with Verizon NJ that its actions in regard to these items are in compliance with existing FCC rules and precedents, and, accordingly, do not warrant a finding of non-compliance.[340]

Finally, the Board finds no merit to Cablevision's claims regarding the unavailability of EELs or dark fiber. These issues have been decided in our recent UNE decision and are not ripe for discussion here.

5. Conclusion

Based on the foregoing and the evidence of record, the Board FINDS that Verizon NJ has demonstrated compliance with Checklist item No. 4.

F. Checklist Item 5 - Unbundled Local Transport

1. Description of Checklist Item

Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "[l]ocal transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services."[341] The FCC has concluded that ILECs must provide interoffice transmission facilities or "transport" facilities, on an unbundled basis, to requesting telecommunications

337 Id. at ¶¶ 14-16.

338 Pennsylvania Approval Order at ¶ 92 (citations omitted).

339 Ibid.

340 Verizon NJ Reply Brief at 16-17.

341 47 U.S.C. §271(c)(2)(B)(v).

carriers pursuant to Section 251(c)(3).[342] The FCC has further concluded that "interoffice transmission facilities" include both dedicated transport and shared transport.[343]

2. Standard of Review

The FCC has held that ILECs must provide unbundled dedicated transport or transmission facilities between LEC central offices or between such offices and those of competing carriers.[344] This includes, at a minimum, interoffice facilities between end offices and serving wire centers ("SWCs"), SWCs and IXC Points of Presence (POPs), tandem switches and SWCs, end offices or tandems of the ILEC, and the wire centers of ILECs and requesting carriers.[345] The FCC has further concluded that the ILEC must also provide all technically feasible capacity-related transmission services, such as DS1-DS3 and OC3-OC192.[346] The ILEC must also provision dark fiber as a UNE.[347] Additionally, the FCC has held that ILECs must provide unbundled shared transport, which consists of transmission facilities shared by more than one carrier, including the ILEC, between end office switches, between end office switches and tandem switches, and between tandem switches in the ILEC's network.[348] Therefore, to satisfy its obligations under this subsection of the competitive checklist, an applicant must demonstrate that it is offering both dedicated and shared transport to requesting carriers.[349]

3. Summary of Evidence before the Board

a. Verizon NJ

Verizon NJ stated that it provides unbundled local transport pursuant to interconnection agreements.[350] According to Verizon NJ, dedicated transport is available within the same LATA between CLEC central offices and Verizon NJ central offices and among Verizon NJ central offices.[351] Verizon NJ stated that it offers transmission capabilities, such as DS1, DS3, and optical carrier levels OC-3 and OC-12.[352] Verizon NJ stated that by June 2001, it had 460

342 Local Competition First Report and Order at ¶ 439.

343 Id. at ¶ 440.

344 Id.

345 Id.

346 UNE Remand Order at ¶ 323.

347 Id. at ¶ 326.

348 In the Matter of Implementation of the Local Competition Provisions in TA-96, CC Docket No. 96-98, Third Order on Reconsideration, FCC 97-295 at ¶¶ 22, 25 (rel. August 18, 1997) (Local Competition Third Reconsideration Order).

349 See Verizon Pennsylvania Order, Appendix C at ¶ 53.

350 Checklist Declaration at ¶ 236.

351 Id. at ¶ 237.

352 Ibid.

dedicated InterOffice Facility ("IOF") arrangements in service.[353] Additionally, Verizon NJ asserted that CLECs may use its shared transport network element for carrying their customers' traffic between Verizon NJ's end-office switches, between Verizon NJ's end-office and tandem switches, and between Verizon NJ's tandem switches.[354] Verizon NJ also asserted that CLECs may use shared transport to reach other carriers' networks that are interconnected to Verizon NJ's network.[355]

Verizon NJ also stated that it provides shared transport to CLECs in connection with unbundled local switching elements through UNE-P. Verizon NJ argued that unbundled shared transport is not a separately orderable element, but is provisioned in conjunction with the unbundled line port at Verizon NJ's end office switch.[356] Verizon NJ reported that through June 2001, it has provisioned nearly 11,400 switching ports to CLECs, and is providing shared transport to and from each switching port.[357] Thus, the interval associated with unbundled shared IOF transport would be the interval for establishing an unbundled line port depending on the specific type of unbundled line port ordered, according to Verizon NJ.

Verizon NJ also reported that during April, May and June 2001, it provisioned fewer than 23 orders for unbundled dedicated transport each month.[358] Verizon NJ stated that it missed 7 orders in April, but missed only 1 and 2 appointments in May and June, respectively.[359]

According to Verizon NJ, as of June 2001, it had provisioned 460 dedicated IOF arrangements (120 DS-1 level and 340 DS-3 level arrangements) to 14 different CLECs.[360] Verizon NJ also added 1.6 million DS-0 voice grade equivalent circuits to the IOF network in New Jersey, 6.6 percent of which (106,000 equivalent voice-grade circuits) were provided to CLECs as dedicated UNE IOF transport.[361] Verizon NJ also states that it offers OC-3 (optical carrier level 3) and OC-12 (optical carrier level 12) transport.[362]

The company stated that the provisioning interval for unbundled DS1 and DS3 interoffice transport facilities is based on Verizon NJ's experience with private line and special access service[363]. For quantities of one to eight circuits, the general provisioning interval is 15 days

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353 Id. at ¶ 246.

354 Id. at ¶ 253.

355 Ibid.

356 Id. at ¶ 254.

357 Ibid.

358 Id. at ¶ 248.

359 Ibid.

360 Id. at ¶ 246.

361 Id. at ¶ 247.

362 Id. at ¶ 237.

363 Id. at ¶ 242.

where facilities are available. Intervals for larger requests and for optical carrier transport facilities are negotiated with the CLEC, according to Verizon NJ. [364]

Verizon NJ argued that the comparison between missed installation appointments for UNE-IOF and the Verizon NJ retail compare group as currently reported on Verizon NJ's C2C performance reports is misleading. The retail compare group for UNE-IOF consists of all non-UNE special services, including low-speed, copper, two-wire special services, such as off premise extensions and burglar alarm circuits. Verizon NJ suggested that, unlike UNE-IOF transport, these low-speed services are not dependent on the availability of high-speed fiber multiplexers and equipment necessary to provision fiber-based high capacity DS3 services.[365] Verizon NJ argued that a more appropriate comparison for UNE transport is the provision of retail DS3 high capacity circuits.[366] Verizon NJ noted that a proposal to change this retail comparator in New Jersey was included in the proposed Guidelines Changes submitted to the Board, and no commenter had objected to this change.[367]

Additionally, Verizon NJ states that it has made dark fiber available to CLECs in accordance with the FCC's UNE Remand Order.[368] Dark Fiber is available where in place facilities exist and is provided in pairs by Verizon NJ.[369] Verizon NJ asserts that terms and conditions for Dark Fiber are accessible to any CLEC through their individual interconnection agreements and that it is willing to negotiate any additional terms and conditions with a CLEC. [370] Verizon NJ indicates that it has amended interconnection agreements with 14 CLECs to include terms and conditions on the offering and provisioning of dark fiber.[371] As of June 2001, Verizon NJ has provisioned to CLECs a total of 18 dark fiber circuits, with 14 of the 18 provided in 2001.[372] Verizon NJ states that rates, terms and conditions for dark fiber are being addressed in the recent Unbundled Network Elements Rates, Terms and Conditions Proceeding. [373]

b. CLECs

In its initial brief, XO makes a claim disputing Verizon NJ's compliance Checklist Item 5.[374] However, XO does not identify a specific concern or reference specific information included in the record. In addition, in a letter dated November 29, 2001, Consolidated Edison

364 Ibid.

365 Id. at ¶ 249.

366 Id. at ¶ 250; see also Verizon Massachusetts at ¶¶ 209-210; see also Verizon Pennsylvania Order at ¶ 110.

367 Checklist Declaration at ¶250.

368 Checklist Declaration at ¶ 244.

369 Id.

370 Id.

371 Id.

372 Id.

373 In The Matter of the Board's Review of Unbundled Network Elements Rates, Terms and Conditions for Bell Atlantic-New Jersey, Inc., Docket No. TO00060356.

374 Initial Brief of XO New Jersey, Inc., at 2.

Communications, Inc. and CTC Communications Corp. filed a Petition for Limited Intervention and Submission of Limited Comments. The substance of ConEd's and CTC's comments concern Verizon NJ's terms and conditions regarding the provision of dark fiber. ConEd and CTC indicate that Verizon NJ refuses to provide dark fiber at "any technically feasible point." Further, ConEd and CTC take issue with Verizon NJ's unbundled dark fiber reservation policy. ConEd and CTC suggest the Board should require Verizon NJ to adopt what it describes as the more reasonable terms, conditions and practices that are in place in Verizon Massachusetts and New Hampshire.[375]

Verizon NJ responded that this filing was untimely and procedurally deficient. In addition, Verizon NJ pointed out that the terms and conditions for dark fiber are being addressed in the recent Unbundled Network Element Rates, Terms and Conditions proceeding.

4. Discussion

We believe that the record demonstrates that Verizon NJ complies with the requirements and standards for the provision of Unbundled Local Transport. It is unclear what concerns XO has regarding Verizon NJ's compliance with this checklist item since it included no information in the record. Therefore, we have no basis to evaluate its unsubstantiated allegations.

The Board has denied ConEd and CTC's November 29th request for limited intervention. Nonetheless, the Board's recent action in the UNE proceeding addresses the issues regarding unbundled dark fiber terms and conditions raised by ConEd and CTC.[376] We agree with Verizon NJ that the issues of unbundled dark fiber terms and conditions were extensively litigated in the UNE proceeding and need not be re-addressed in this proceeding. In the recent UNE decision, the Board indicated that Verizon NJ must make certain modifications to its terms and conditions for the provision of unbundled dark fiber.[377]

5. Conclusion

Based upon the record, the Board FINDS that Verizon NJ is in compliance with the requirements of Checklist item 5.

G. Checklist item 6 -Unbundled Local Switching

1. Description of Checklist Item

Section 271(c)(2)(B)(vi) requires a BOC to provide "[l]ocal switching unbundled from transport, local loop transmission, or other services."[378] In the Local Competition First Report and Order, the FCC required BOCs to provide unbundled local switching that included line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch.[379] The features,

375 Cablevision Lightpath – NJ, Inc. raised similar arguments in its Initial Brief at page 20.

376 The same is true of the issues raised by Cablevision Lightpath.

377 Docket No. T0OOO60356, Summary Order of Approval, at 11-12 (issued December 17, 2001).

378 47 U.S.C. §271(c)(2)(B)(vi).

379 Local Competition First Report and Order at ¶ 412.

functions, and capabilities include the basic switching function as well as the same basic capabilities that are available to the BOC's customers.[380]

2. Standard of Review

Unbundled local switching includes all vertical features that the switch is capable of providing, as well as any technically feasible customized routing functions.[381] In the Local Competition First Report and Order, the FCC held that BOCs must permit CLECs to purchase unbundled switching in a manner that permits competing carriers to offer, and bill for, exchange access and the termination of local traffic.[382] Additionally, the BOC must demonstrate that it offers equivalent
access to billing information for this checklist item.

In previous section 271 orders, the FCC held that a BOC must make available trunk ports on a shared basis and routing tables resident in the BOC's switch, as necessary to provide access to the shared transport functionality.[383] Lastly, a BOC may not limit a CLEC's ability to use unbundled local switching to provide exchange access by requiring CLECs to purchase a dedicated trunk from an IXC's point of presence to a dedicated trunk port on the local switch.[384] Therefore, to satisfy its obligation under this subsection, an applicant must demonstrate compliance with these requirements on unbundled local switching.[385]

3. Summary of Evidence before the Board

a. Verizon NJ

Verizon NJ states that it provides nondiscriminatory access to local switching, making available the features, functions, and capabilities of the switch through its interconnection agreements.[386] The Board's "Generic Order" issued in December 1997 also obligates Verizon NJ to provide local and tandem switching facilities to CLECs.[387] According to Verizon NJ, it provisions CLEC orders for local and tandem switching using the same personnel, facilities and equipment as Verizon NJ's retail orders.[388] The only differences between the CLEC and retail provisioning processes are those inherent in the unique characteristics of unbundled switching elements (e.g., recording of access usage for CLEC, suppression of Verizon NJ access bills, and customized routing, if requested), according to Verizon NJ. CLECs purchasing unbundled local and tandem switching elements are provided with usage recording suitable for billing exchange access charges to IXCs in the same manner that Verizon NJ bills IXCs for exchange access service. Verizon NJ states that it suppresses its exchange access billing on the

380 Id.

381 Id.

382 Local Competition First Report and Order at ¶ 363, fn. 772.

383 See Ameritech Michigan 271Order at ¶¶ 327-28; Second BellSouth Louisiana 271Order at ¶ 209.

384 Id. at ¶¶ 323-26.

385 See BA NY 271 Order at ¶ 346; SWBT Texas 271 Order at 339 ¶; SWBT Kansas and Oklahoma 271 Order at ¶ 242.

386 Checklist Declaration at ¶¶ 258-260.

387 Id.

388 Id. at ¶ 273.

switching elements Verizon NJ provides to CLECs. Verizon NJ states that this is the same approach used by Verizon NY and Verizon MA, and approved by the FCC.[389]

Verizon NJ states that it provides local switching in each of its central offices and provides a cross-connect between a line or trunk port and a CLEC's collocation arrangement. Additionally, Verizon NJ claims it offers access to tandem switching[390] at each tandem switch and provides a cross-connect between a trunk port and a CLEC's collocation arrangement.[391] Moreover, Verizon NJ states it makes eight types of switch ports generally available in interconnection agreements and in its November 5, 1999 and May 25, 2000 compliance filings with the Board.[392]

The record reflects that, as of June 2001, there were 18 CLECs using Verizon NJ's UNE switching arrangements.[393] Through the end of June 2001, Verizon NJ suggests that it had provided 11,400 line side local switching ports as part of UNE-P combinations that include a UNE loop[394]. Of these, the record reflects that approximately 11,000 were for business service, while 400 were for residence customers. [395]

According to Verizon NJ, local switching may be combined with shared transport, enabling a CLEC to route its traffic over Verizon NJ's network in the same way that Verizon NJ routes traffic for its own retail customers. In addition, Verizon NJ states that it will also provide local switching, upon request, using customized routing by class-of-call, for example, operator services and directory assistance.[396]

Verizon NJ states that it provides CLECs with the combination of UNEs including access to the Verizon NJ switches known as UNE-platform ("UNE-P") which is available under interconnection agreements and in Verizon NJ's November 5, 1999 and May 25, 2000 compliance filings with the Board.[397] Verizon NJ will also combine "loopless" unbundled local switching with other UNEs or Verizon NJ services, including shared or dedicated interoffice transport, shared tandem switching, SS7 signaling, and access to E911.[398]

Verizon NJ indicates that it has developed the network design request ("NDR") process to facilitate the development and implementation of CLEC requests for Verizon NJ provided routing. The NDR is used to set up the CLECs network and routing plans within Verizon NJ's network. Through this process, according to Verizon NJ, a CLEC can request standardized routing and blocking options and dialing plans, mirroring the Verizon NJ routing, blocking, and dialing plans. Alternatively, a CLEC can request its own customized plans, according to Verizon NJ.[399]

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389 Id.

390 Tandem switching consists of dedicated tandem trunk ports, shared tandem trunk ports, features, and tandem usage and group routings. Checklist ¶ 261.

391 Id. at ¶ 259.

392 Id. at ¶ 260.

393 Id. at ¶ 270.

394 Id. at ¶ 274.

395 Id..

396 Id. at ¶ 262.

397 Id. at ¶¶ 263-264.

398 Id. at ¶ 265.

399 Id. at ¶¶ 267-269.

Verizon NJ states that NDR completion intervals are typically 45 business days, including the loading of OS/DA branding tapes and loading CLEC-specific rates.[400] NDR completion intervals for arrangements including customized routing are negotiated depending on the complexity and scope of the request.[401] According to Verizon NJ, CLECs that purchase Verizon NJ's OS/DA platform in connection with unbundled switching may choose from three branding options: (1) Verizon NJ branding; (2) no branding; or (3) a CLEC's own branding. Regardless of the branding option chosen, CLECs can establish their own rates for these services, or they can adopt Verizon NJ's retail rate schedule.[402] The record reflects that, as of June 2001, 8 of the 18 CLECs using Verizon NJ UNE switching arrangements have chosen to use Verizon NJ's OS/DA branding, 6 have chosen to be unbranded, and the remaining 4 CLECs have chosen to use their own branding.[403]

b. ATX

ATX presented testimony contending that Verizon NJ fails to demonstrate it provides local switching and the UNE-P as required by Checklist Item 2 and 6. Specifically, ATX maintains that Verizon NJ has not made available certain features and capabilities of the local switch to support in a UNE-P arrangement the "assume dial-9" feature of Verizon NJ's "CustoPak" Centrex service, as well as analog PBX trunk ports and the remote call forwarding feature.[404] Although ATX properly raises these claims in both sections of the checklist, ATX primarily relates them to its business plan to employ UNE-P arrangements to serve New Jersey customers in the future.

4. Discussion

The Board addressed ATX's comments in Checklist 2 *supra*. As set forth therein, we stated our concerns but are not persuaded that Verizon NJ fails to comply with this checklist item. In particular, we noted that Verizon NJ made available each of the features and capabilities requested by ATX, but that the timing of these offerings were of concern.

5. Conclusion

Based upon the evidence in the record, the Board FINDS that Verizon NJ has demonstrated compliance with this checklist item.

H. Checklist Item 7 -- 911, E911, Directory Assistance, Operator Calls

1. Description of Checklist Item

Section 271(c)(2)(B)(vii)(I) of TA-96 requires a BOC to provide nondiscriminatory access to: (I) 911 and E911 services; (II) directory assistance services to allow the other carrier's customers to obtain telephone numbers, and (III) operator call completion services.[405]

400 Id. at ¶ 268.

401 Id. at ¶ 269.

402 Id. at ¶ 270.

403 Id. at ¶ 270.

404 Exh. ATX --, at ¶¶ 8-14; ATX Brief, pp. 4-10 Cite.

405 47 U.S.C. § 271 (c)(2)(b)(vii) (I), (II), and (III). See 47 C.F.R. §51.217.

2. Standard of Review

A BOC must provide CLECs access to its 911 and enhanced 911 ("E911") services in the same manner that a BOC obtains such access (i.e., at parity). Specifically, the BOC must maintain the 911database entries for CLECs with the same accuracy and reliability that it maintains this database for its own customers. For facilities-based carriers, a BOC must provide unbundled access to the 911 database and 911 interconnection. To meet subsections II and III of this checklist item, a BOC must be in compliance with the rules implementing Section 251(b)(3) of the Act.[406]

Directory assistance ("DA") services "allow the other carrier's customers to obtain telephone numbers, and the FCC has indicated that Operator Call Completion Services referred to in this checklist item include "any automatic or live assistance to a consumer to arrange for billing or completion, or both, of a telephone call."[407] The FCC has held that "nondiscriminatory access to directory assistance and directory listings" means "customers of all telecommunications service providers should be able to access each LEC's [DA] service and obtain a directory listing on a nondiscriminatory basis."[408] Nondiscriminatory access to operator services ("OS") means that "a telephone service customer, regardless of the identity of his or her local telephone service provider, must be able to connect to a local operator by dialing '0,' or '0 plus' the desired telephone number."[409]

The FCC has stated that competing carriers may provide OS and DA by either reselling the BOC's services or by using their own personnel and facilities to provide these services.[410] The FCC's rules require BOCs to permit CLECs wishing to resell the BOC's OS/DA to request the BOC to brand their calls, and that competing carriers wishing to provide OS/DA using their own facilities and personnel must be able to obtain directory listings either by obtaining directory information on a "read only" or "per dip" basis from the BOC's DA database, or by creating a database by subscriber listing information in the BOC's database.[411] Although the FCC originally concluded that BOCs must provide OS/DA on an unbundled basis pursuant to Sections 251 and 252 of TA-96, the FCC removed OS/DA from the list of required unbundled network elements in its UNE Remand Order.[412] The FCC also has stated that checklist items that do not fall within a BOC's UNE obligations still must be provided in accordance with Sections 201(b) and 202(a) of the Act, which require that rates and conditions are just and reasonable, and not unreasonably discriminatory.[413]

3. Summary of the Evidence Before the Board

a. E911 Access

Verizon NJ's Position

406 47 U.S.C. §251(b)(3); See SWBT Texas 27: Order at ¶346.

407 SWBT Texas 271 Order at ¶346n.968.

408 Id. at ¶346.

409 Ibid.

410 Id. at ¶347.

411 Id. at ¶347; 47 C.F.R. §51.217(d).

412 SWBT Texas 271 Order at ¶348.

413 Ibid.

Verizon NJ stated that it offers E911 access to CLECs under existing interconnection agreements.[414] Verizon NJ indicated that CLECs using their own switching may interconnect with 911 tandems using their own trunks or trunks provided by Verizon NJ or another carrier.[415] Calls received at the 911 tandems are routed to the appropriate Public Safety Answering Points ("PSAP") on a first-come, first-served basis, without regard to service provider, according to Verizon NJ.[416]

According to Verizon NJ, there are three ways CLECs can use the 911 network to provide E911 service to their customers.[417] First, a reseller may resell Verizon NJ's retail exchange service. Second, a CLEC purchasing Verizon NJ's unbundled local switching may use Verizon NJ-furnished dial tone to provide E911. Third, a CLEC that uses its own switch may interconnect with the E911 network. With these arrangements, according to Verizon NJ, CLEC customers are able to dial 911 to reach an emergency service provider in the same manner as Verizon NJ's end user customers. The 911 calls by customers of resellers and CLECs using Verizon NJ's local switching are treated in the same manner as 911 calls by Verizon NJ's end-users.[418]

Verizon NJ stated that it is providing interconnection to CLECs at each of the four E911 tandems. As of June 30, 2001, Verizon stated that 21 CLECs had interconnected to the E911 tandems and Verizon NJ provided over 1,350 E911 trunks to those CLECs.[419] The same dedicated trunks are used to carry 911 calls by both Verizon NJ and CLEC end-users from the 911 tandem to the PSAP on a first-come, first-served basis, according to Verizon NJ. [420]

(2) Other Parties Positions

No party disputed Verizon NJ's compliance with this portion of Checklist Item 7.

b. Directory Assistance and Operator Call Completion Services

(1) Verizon NJ

Verizon NJ claimed that it provides nondiscriminatory access to its directory assistance services and operator call completion services ("OCC") (sometimes referred to as "operator services" ("OS")) to CLECs pursuant to interconnection agreements.[421] Specifically, Verizon NJ stated that it makes OS/DA services available to CLECs by the following means: 1) CLECs may resell Verizon NJ's retail service; 2) CLECs can purchase Verizon NJ's DA service and OS pursuant an interconnection agreement, and Verizon NJ will provide DA service and OS directly to CLEC customers; 3) CLECs can establish their own centers to provide DA service and OS to their customers, and use Verizon NJ's DA database pursuant to an interconnection agreement.[422]

414 Checklist Declaration at ¶ 277.

415 Id. at ¶ 282.

416 Id. at ¶ 285.

417 Id. at ¶ 280.

418 Id. at ¶¶ 280-281.

419 Id. at ¶ 284.

420 Id. at ¶285.

421 Id. at ¶277.

422 Id. at ¶¶293, 304.

CLECs purchasing Verizon NJ's DA service or OS that use their own switches or Verizon NJ's unbundled local switching, may interconnect directly with Verizon NJ's DA or OCC platforms using their own facilities or dedicated transport facilities purchased from Verizon NJ or another carrier, according to Verizon NJ.[423] CLECs that use Verizon NJ's unbundled local switching may also interconnect directly with Verizon NJ's DA or OCC platform using shared transport facilities purchased from Verizon NJ.[424] As of June 30, 2001, Verizon NJ stated that 9 CLECs were purchasing Verizon NJ's DA service and interconnecting using approximately 1,080 dedicated trunk ports and transmission facilities provided by Verizon NJ.[425] An additional 97 CLECs and resellers were purchasing Verizon NJ's DA service and interconnecting using Verizon NJ's shared transport.[426] As of June 30, 2001, the record reflects that 8 CLECs were purchasing Verizon NJ's OCC service and interconnecting using approximately 1,080 dedicated trunk ports and transmission facilities provided by Verizon NJ.[427] An additional 97 CLECs and resellers were purchasing Verizon NJ's OCC service and interconnecting using Verizon NJ's shared transport.[428]

Verizon NJ stated that CLECs that resell Verizon NJ's retail services or use Verizon NJ's unbundled local switching have the option of purchasing Verizon NJ's DA service or OS, or using their own or another carrier's DA or OCC centers.[429] If the CLEC chooses to use its own or another carrier's DA or OCC center, the CLEC must establish customized routing and dedicated trunk ports and transmission facilities between Verizon NJ's switches and the DA or OCC provider's platform. Verizon NJ indicated that CLECs may install their own transmission facilities or obtain them from Verizon NJ or another carrier. As of June 30, 2001, Verizon NJ stated that no CLECs were purchasing customized routing.[430]

For CLECs that establish their own DA centers, Verizon NJ states that it offers nondiscriminatory access to its DA listings.[431] Verizon NJ indicated that it offers Direct Access to Directory Assistance ("DADA"), a service that provides "read only" access to the listings in Verizon NJ's DA database and gives CLECs the same access capabilities that Verizon NJ's retail operators have to respond to customers listing requests.[432] Verizon NJ also stated that it offers a Directory Assistance License Agreement, which makes the contents of Verizon NJ's DA database available to CLECs in an electronic format for their use in providing local DA services.[433]

Verizon NJ stated that it provides nondiscriminatory access to its DA services.[434] Verizon NJ provisions, maintains and repairs DA trunks for CLECs using the same facilities, equipment

423 Id. at ¶ 294, 306.

424 Ibid.

425 Id. at ¶ 295.

426 Ibid.

427 Id. at ¶306.

428 Ibid.

429 Id. at ¶¶ 296, 307.

430 Ibid.

431 Id. at ¶ 299.

432 Ibid.

433 Id. at ¶ 299-300.

434 Id. at ¶ 301.

and personnel that Verizon NJ uses for its own DA trunks. According to Verizon NJ, CLEC DA trunks are provisioned in the same manner that Verizon NJ provisions all other CLEC trunks.[435]

Verizon NJ also declared that DA calls from customers of CLECs that use Verizon NJ's DA service are handled on a nondiscriminatory basis.[436] Service performance results show an average speed of answer at Verizon NJ's centers of 4.44 seconds in April, 4.75 seconds in May, and 5.34 seconds in June for Verizon NJ retail and resellers' customers; and 1.23 seconds in April, 1.24 seconds in May, and 1.27 seconds in June for customers of facilities-based CLECs and CLECs purchasing UNE Platform. In each of the months of April, May and June, the record reflects that the percentage of DA calls answered within 30 seconds was greater than 99 percent for Verizon NJ retail and resellers' customers, and 100 percent for customers of facilities-based CLECs and CLECs purchasing UNE Platform.[437] Verizon NJ further stated that it provides nondiscriminatory access to its OCC services, which allow end users to dial "0" or "0" plus 10 digits to place collect, calling card, and bill to third number calls, with or without live operator assistance.[438] Verizon NJ provisions, maintains and repairs OCC trunks for CLECs using the same facilities, equipment and personnel that Verizon NJ uses for its own OCC trunks. Verizon indicated that CLEC OCC trunks are provisioned in the same manner that Verizon NJ provisions all other CLEC trunks.[439]

Verizon NJ stated that its OCC service is available with the CLEC's own brand, unbranded, or with Verizon NJ's brand.[440] According to Verizon NJ, for CLECs that provide their own trunks or purchased dedicated trunks from Verizon NJ to interconnect to Verizon NJ's OCC platform, branding is done based upon the trunk group used to deliver traffic, and for CLECs that use Verizon NJ's shared transport network to interconnect to Verizon NJ's OCC platform, branding is based on the line number of the calling party. Verizon NJ indicated that as of June 30, 2001 it provided carrier-specific branding to 5 CLECs, unbranded service to 12 CLECs, and Verizon NJ-brand service to 88 CLECs.[441]

According to Verizon NJ, OCC calls from customers of CLECs that use Verizon NJ's OCC service are handled on a nondiscriminatory basis.[442] Service performance results show an average speed of answer at Verizon NJ's retail service centers, for Verizon NJ retail and resellers' customers, of 3.56 seconds in April, 3.83 seconds in May, and 3.73 seconds in June; and 3.06 seconds in April, 2.89 seconds in May and 2.39 seconds in June for customers of facilities-based CLECs and CLECs purchasing UNE Platform. The record shows that in each of the months of April, May and June, the percentage of OCC calls answered within 30 seconds was greater than 99 percent for Verizon NJ retail and resellers' customers, and for customers of facilities-based CLECs and CLECs purchasing UNE Platform.

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(2) Other Parties' Position

435 Id.

436 Id. at ¶ 302.

437 Ibid.

438 Id. at ¶¶305,310.

439 Id. at ¶310.

440 Id. at ¶308.

441 Ibid.

442 Id. at ¶ 311.

No party contended that Verizon NJ is not in compliance with this portion of Checklist Item 7.

4. Conclusion

Based upon the evidence in the record, the Board FINDS that Verizon NJ is providing nondiscriminatory access to 911, E911 and OS/DA and has demonstrated its compliance with Checklist Item 7.

I. Checklist Item 8 -- White Pages

1. Description of the Checklist Item

Section 271(c)(2)(B)(viii) of the Act requires a BOC to provide white page directory listings for customers of other carriers' telephone exchange service. [443]

2. Standard of Review

Section 251(b)(3) of TA-96 obligates all LECs to permit competitive providers of telephone exchange service and telephone toll service to have nondiscriminatory access to directory listings. The FCC has ruled that consistent with its interpretation of "directory listing" as used in section 251(b)(3), "white pages" as used in Checklist Item 8 refers to the alphabetical directory that includes the residential and business listings of the customers of the local exchange provider and includes, at a minimum, the subscriber's name, address, telephone number, or any combination thereof.[444] The FCC has determined that a BOC satisfies the requirements of Checklist Item 8 by demonstrating that it (1) provides nondiscriminatory appearance and integration of white page directory listings to CLECs' customers and (2) provides white page listings for competitors' customers with the same accuracy and reliability that it provides its own customers.[445] The FCC has rejected arguments that an RBOC did not meet this checklist item even though CLECs experienced problems with the BOC's processes for altering customer listings and incorporating changes into the white pages directory including listings failing to appear, but indicated that a systemic problem, involving a significant number of listings, would warrant a finding of noncompliance.[446]

3. Summary of Evidence Before the Board

a. Verizon NJ

Verizon NJ asserted that it provides nondiscriminatory appearance of white pages directory listings in the appropriate white pages directories for customers served by CLECs.[447] Verizon NJ also stated that it provides CLEC customers in New Jersey with white pages directory listings in accordance with the FCC's rules and Section 271 (c)(2)(B)(viii) of TA-96.[448] Verizon NJ claimed it has procedures in place to ensure that the directory listings of CLEC customers are included in Verizon NJ's database on an accurate, reliable, and nondiscriminatory basis.[449]

443 47 U.S.C. § 271(c)(2)(B)(viii).

444 Pennsylvania 271 Order; Appendix C at ¶60.

445 Ibid.

446 SWBT 271 Order at ¶ 358.

447 Checklist Declaration at ¶316.

448 Id. at 313.

449 Id. at¶313.

As of July 31, 2001 Verizon NJ's white pages database contained approximately 118,000 CLEC and reseller listings.[450]

The terms and conditions of the white page directory listings services that Verizon NJ provides its retail customers are contained in Verizon NJ's Tariff B.P.U. – N.J.-No. 2 Exchange and Network Services, Section A5.7.[451] The terms and conditions of the white page directory listings services Verizon NJ makes available to other telephone companies and their end users are contained in numerous Board-approved interconnection agreements, according to Verizon NJ.[452]

Verizon NJ stated that white page and yellow page directories are published by Verizon Directory Services New Jersey Inc., an indirect wholly-owned subsidiary of Verizon Communications Inc., and one of a number of Verizon Information Services ("VIS") companies. VIS receives service orders from Verizon NJ to process residential, business, and government listings in the white page database. VIS publishes 42 directories of white page listings for New Jersey, according to Verizon NJ.

Verizon NJ stated that VIS processes listing service order data for CLEC customers and Verizon NJ's retail customers in the same manner.[453] The VIS directory listing system has built-in, automated features to detect and edit listing errors, and these features are applicable to all customer accounts, CLEC and reseller, as well as Verizon NJ, according to the company.[454] Verizon NJ further stated that the VIS directory listing system automatically identifies and "flags" a customer account if certain listing information is not correct, and gave as an example that, the VIS directory listing system could flag a customer account if information on the service order does not match information already in the system.[455] If a problem is detected, Verizon NJ stated that VIS attempts to resolve it itself (e.g., by correcting spelling errors), and if VIS cannot resolve the problem itself, VIS queries back the request to Verizon NJ. If Verizon NJ cannot resolve the problem, the company indicated that it asks the appropriate carrier for clarification or correction of the account listing information. VIS does not delete a listing from the directory without the receipt of a disconnect listing service order or a listing service order changing the account to non-published or non-listed service, according to Verizon NJ.[456]

Verizon NJ asserted that it has several procedures that provide CLECs and resellers with tools to validate their customers' listings.[457] According to Verizon NJ, with one procedure, thirty business days prior to the "service order close" date for a particular white page directory, VIS gives each carrier a listings verification report ("LVR") containing all listings for the carrier that are in the VIS database for publication in the upcoming directory. The LVR includes name, address, listed telephone number, class of service, customer directory name, directory appearance, and type of listing (e.g., additional list). Unless the carrier elects a different interval, LVRs are extracted from VIS's database 31 business days prior to the scheduled directory service order close date and then mailed within one business day of extraction.

450 Ibid.

451 Id. at ¶314.

452 Ibid.

453 Id. at ¶319.

454 Ibid.

455 Ibid.

456 Id. at ¶319-320.

457 Id. at ¶321-324.

Verizon NJ also indicated CLECs are able to view all published listings through a "real-time" electronic graphical user interface (or "Web GUI"), which gives CLECs access to an up-to-date display of VIS's white page directory listings database for New Jersey.[458] According to Verizon NJ, CLECs also are able to search and sort their directory listings in an electronic format. At a CLEC's request, Verizon NJ will provide the LVR in electronic text format (compatible with Excel spreadsheet format), which allows the CLEC to search and sort these listings.[459]

Another mechanism identified by Verizon NJ for verifying the accuracy of listing information is that CLECs receive an electronic confirmation order from Verizon NJ indicating Verizon NJ's receipt and processing of listing service orders. For CLECs using LSOG Version 4 or higher, this confirmation order includes the listing data processed. By comparing its LSRs to the confirmation message, CLECs and resellers can determine whether their listing information was accurately processed by Verizon NJ. Details of the composition of the confirmation message, including directory listing information, is documented at the Verizon wholesale web site, according to Verizon NJ.[460]

Verizon NJ stated that it identifies the last day on which any carrier (including Verizon NJ) may send listings for an upcoming directory -- known as the "service order close date" -- on Verizon's wholesale web site. Verizon NJ indicated that if the "service order close date" for a directory is before the customer's "service order completion date," VIS accepts "advanced listings" from both Verizon NJ and CLECs so that their customer's listing can nevertheless be included in a directory.[461]

Verizon NJ also stated that VIS distributes directories to Verizon NJ and CLEC customers at the same time and in the same manner. Within New Jersey, "out-of-area" white page directories are available to CLEC and Verizon NJ customers on the same terms. Additional directories and out-of-area directories that are provided to Verizon NJ customers at no charge are also provided to CLEC customers at no charge, according to Verizon NJ.[462]

Verizon NJ stated that it provides CLECs with extensive documentation regarding the procedures for listing their customers in directories by "posting" this information on the Verizon "Wholesale Markets" web site. This information is contained in the Resale Handbook, Volume III, Section 8, and the CLEC Handbook, Volume III, Section 6 and the handbooks, according to Verizon NJ, are updated periodically to incorporate improvements in technology and procedures.[463] The Wholesale Markets group also offers CLECs a two-day course on directory listings and information regarding scheduling and course registration is available on the Verizon Wholesale Markets web site.[464]

Verizon NJ stated that it monitors and reports the timeliness with which it provides CLECs with Directory LVRs. The results of this performance measurement showed from April 2001 through June 2001, that Verizon NJ provided 100% of directory LVRs at least 30 business days prior to the "service order close" date for the particular white page directory.[465]

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458 Id. at ¶322.

459 Id. at ¶323.

460 Id. at ¶324.

461 Checklist Declaration at ¶325.

462 Id. at ¶326.

463 Id. at ¶327.

464 Id. at ¶328.

465 Id. at ¶329.

b. Other Parties Positions

(1) XO

XO contended that Verizon NJ did not satisfy this checklist item.[466] XO submitted that different processes used by Verizon NJ for its retail and wholesale customers create "a significant opportunity for error".[467] XO further stated that for a majority of CLEC directory listing orders, Verizon NJ utilizes manual processing and that these manual processes introduce errors and frequently result in omitted or inaccurate listings. XO asserted that this then causes the CLEC to expend time and resources to identify and correct these errors.[468]

XO also argued that the Board should be concerned because the LVR was outside the scope of KPMG's test, and that because directories are only published once a year, the impact of an error is long-lasting.[469]

4. Conclusion

While XO has raised allegations concerning this checklist item, XO failed to provide any compelling evidence to support its contention. XO did not offer a single example of a white page listing error to support its contention. For this reason, the Board rejects XO's allegations. The Board has been presented with no credible evidence to suggest that Verizon NJ's methods for provisioning white page listings for CLEC customers is discriminatory. Finally, the Board notes that KPMG conducted a third party test on the accuracy of Verizon NJ's white page listings, and found that Verizon NJ was accurately provisioning the directory listing database.[470] For all of these reasons and based on the record before us, the Board FINDS that Verizon NJ has met the requirements of this Checklist Item 8.

J. Checklist Item 9 – Numbering Administration

1. Description of the Checklist Item

Section 271(c)(B)(ix) of the Act requires that a BOC provide nondiscriminatory access to telephone numbers for assignment to other carrier's telephone exchange service customers and mandates compliance with numbering "guidelines, plan or rules" after they have been established.[471]

2. Standard of Review

466 XO Brief at 19-23.

467 Id. at 19.

468 Id. at 20-21.

469 Id. at 20, 22-23.

470 KPMG Final Report at p229. As to XO's argument that the LVR was not included in KPMG's test, the Board notes that XO did not rais such a concern at the time of the test, notwithstanding that the Board solicited comments from interested parties on the KPMG test. See February 2, 2000 letter from Edward B. Beslow, Acting Board Secretary. The Board also notes that in its Verizon Pennsylvania Order at ¶116, the FCC "agree[d] with Verizon that evidence concerning the number of corrections made to errors repeated in an LVR does not necessarily reflect actual provisioning accuracy for published directories."

471 47 U.S.C. 271(c)(2)(B)(ix).

The FCC was designated NeuStar, Inc., as the North American Numbering Plan Administrator ("NANPA") in 1998.[472] As the NANPA, NeuStar is responsible for area code relief planning and for assigning central office codes (NXX codes) – blocks of 10,000 telephone numbers used by carriers to assign specific telephone numbers to their end user customers. At the time of that designation, BOCs ceased to be responsible for the assignment of telephone numbers to other telephone carriers. Rather, BOCs now must demonstrate that they follow the industry numbering administration guidelines and the Commission's rules.[473] The Board received delegated authority from the FCC on number initiatives and has issued orders implementing number conservation measures.[474]

3. Summary of the Evidence Before the Board

a. Verizon NJ

Verizon NJ stated that because Neustar has been designated by the FCC as the NANPA, Verizon NJ is no longer responsible for the assignment of telephone numbers.[475] Verizon stated that it adheres in a timely and accurate manner to all industry numbering administration guidelines and FCC rules.[476] Verizon NJ noted that as of June 30, 2001, approximately 1,300 NXX codes have been assigned to CLECs in New Jersey. As a result, approximately 13,000,000 individual telephone numbers are available to CLECs for assignment to their end users in New Jersey.[477]

Verizon NJ also stated that, when an NXX code is assigned, all carriers must program their switches to recognize the code and route calls to telephone numbers within the code. Newly assigned NXX codes are installed in Verizon NJ's switches and systems in accordance with the timeframes and guidelines established in the industry's Central Office Code Assignment Guidelines.[478] Verizon NJ stated that during the second quarter of 2001, it had installed 115 new CLEC NXX codes, and 98.26% of them were completed by the effective date stated in the Local Exchange Routing Guide ("LERG"), which is the master industry NXX listing issued and updated by NeuStar. No new NXX codes were installed for Verizon NJ Retail in the second quarter.[479]

b. CLECs

No other participants in this proceeding filed comments on Checklist Item 9. No party has complained or commented about numbering administration issues or challenged the programming of CLECs' NXX codes in Verizon NJ's switches in this proceeding.

4. Conclusion

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472 See www..Neustar.com.

473 Pennsylvania 271 Order, Appendix C, ¶61; Second BellSouth LA 271 Order at ¶ 261.

474 See, I/M/O the Implementation of Numbering Resource Optimization through Thousands-Block Number Pooling in each of New Jersey's 201, 973 and 732 Area Codes, Docket No. TX01050313 (June 6, 2001).

475 Checklist Declaration at ¶¶ 332-333.

476 Id. at ¶335.

477 Id. Declaration at ¶ 334.

478 Id. at ¶336.

479 Ibid.

Based upon the record, the Board FINDS that Verizon is in compliance with the requirements of Checklist Item 9.

K. Checklist Item 10 -- Databases and Associated Signaling

1. Description of the Checklist Item

Section 271(c)(2)(B)(x) of the Act requires Verizon NJ to provide nondiscriminatory access to databases and associated signaling necessary for call routing and completion.[480]

2. Standard of Review

In the Local Competition First Report and Order, the FCC identified signaling networks and call-related databases as network elements, and concluded that LECs must provide the exchange of signaling information between LECs necessary to exchange traffic and access call related databases.[481] The FCC also requires BOCs to demonstrate that they provide nondiscriminatory access to (1) signaling networks, including signaling links and signaling transfer points; (2) certain call-related databases necessary for call routing and completion, or in the alternative, a means of physical access to the signaling transfer points linked to the unbundled database; (3) and Service Management Systems ("SMS").[482] The FCC also requires that a BOC design, create, test and deploy Advanced Intelligent Network ("AIN")–based services through the SMS through a Service Creation Environment.[483]

The FCC further clarified this checklist item by defining call-related databases to include those used in signaling networks for billing and collection or the transmission, routing or other provision of telecommunications service.[484] Also, in the Local Competition First Report and Order, the FCC required ILECs to provide unbundled access to their call-related databases, including but not limited to: the Line Information database, the Toll-Free Calling database, the Local Number Portability database, and AIN databases.[485] In the UNE Remand Order, the FCC clarified that the definition of call-related databases includes, but is not limited to, the calling name database, as well as the 911 and E911 databases.[486]

3. Summary of Evidence Before the Board

a. Verizon NJ

Verizon NJ stated that it provides competing carriers with nondiscriminatory access to its signaling network, including signaling links and signaling transfer points on an unbundled

480 47 U.S.C. §271(c)(2)(B)(x).

481 47 C.F. R. § 51.319; Local Competition First Report and Order, FCC Rcd , ¶¶ 478, 479, and 484.

482 Pennsylvania 271 Order, Appendix C at ¶62, citing Second BellSouth LA 271 Order at ¶ 267.

483 Ibid.

484 Ibid.

485 Ibid.

486 Ibid., citing UNE Remand Order at ¶ 403.

basis.[487] Verizon NJ also stated that it provides competing carriers nondiscriminatory access to call-related databases that are used in the signaling networks for transmission, routing, billing and collection. It currently has four call-related databases: (1) Line Information database which provides access to calling name and address; (2) Toll Free database; (3) Local Number Portability database, and (4) Advanced Intelligent Network database.[488] Further, Verizon NJ stated that it provides competing carriers with access to its Service Management Systems, which enables competitors to enter, modify, or delete entries for their own customers in Verizon NJ's other databases.[489] Verizon NJ also stated that it allows requesting carriers to design, create, test and deploy AIN-based services at the service management systems through a Service Creation Environment ("SCE") interface.[490]

b. CLECs

No parties questioned Verizon NJ's compliance with this checklist item.

4. Conclusion

Based on the record, the Board FINDS that Verizon NJ has met the requirements of Checklist Item 10.

L. Checklist Item 11 – Number Portability

1. Description of the Checklist Item

Section 271 (c)(2)(B)(xi) of the Act requires "[u]ntil the date by which the [FCC] issues regulations pursuant to section 251 to require number portability, interim telecommunications number portability through remote call forwarding, direct inward dialing trunks, or other comparable arrangements, with as little impairment of functioning, quality, reliability, and convenience as possible. After that date, full compliance with such regulations."[491] Number portability is defined in Section 3(30) of the Act as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another."[492]

2. Standard of Review

This checklist item requires Verizon NJ to comply with number portability regulations adopted by the FCC pursuant to Section 251 of the Act.[493] Section 251 (b)(2) requires LECs "to provide to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC]."[494]Thereto the FCC requires LECs to offer interim number portability

487 Checklist Declaration at ¶¶ 339-346.

488 Checklist Declaration at ¶¶ 339, 347-367.

489 Checklist Declaration at ¶¶ 339, 375-377.

490 Checklist Declarations at ¶¶340,368-374, 377.

491 47 U.S.C. §271(c)(2)(B)(xi).

492 47 U.S.C. §153(30).

493 47 U.S.C. §251.

494 47 U.S.C. §251(b)(2).

"to the extent technically feasible" and requires LECs to gradually replace interim number portability with permanent number portability.[495]

3. Summary of Evidence Before the Board

a. Verizon NJ

Verizon NJ stated that it meets this checklist item by offering local number portability ("LNP") throughout its service territory.[496] According to Verizon NJ, it provides LNP pursuant to interconnection agreements that allow CLECs to serve end users formerly served by Verizon NJ with their existing telephone numbers.[497] The record shows that as of June 30, 2001, Verizon NJ was porting approximately 224,700 telephone numbers using LNP arrangements for 20 CLECs.[498]

In addition, Verizon NJ stated that it provisions LNP orders on a timely basis. Verizon NJ claimed that from April through June 2001 it had met the due date on more than 97 percent of "LNP only" orders.[499]

Further, Verizon NJ stated that it continues to provide interim number portability where the arrangement is already in place, and that CLECs with existing interim number portability arrangements are being transitioned to LNP on a mutually agreed upon schedule.[500] The record reflects that as of June 30, 2001, Verizon NJ was providing interim number portability arrangements on approximately 150 telephone numbers for 3 CLECs.[501]

b. Other Parties' Positions

No party contended that Verizon NJ fails to provision LNP on nondiscriminatory terms and conditions and a timely basis in accordance with.

4. Conclusion

Based on the record evidence, the Board FINDS that Verizon NJ has demonstrated that it is in compliance with this Checklist Item.

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495 Pennsylvania 271 Order, Appendix C at ¶63; See 47 C.F.R. §52.23.

496 Checklist Declaration at ¶¶ 379.

497 Id.

498 Id. at ¶ 380.

499 Ibid. "LNP Only" orders are identified by Verizon NJ as orders for number portability that are not associated with the purchase of UNE loops. It indicated that an "LNP Only" order would be used by a CLEC that provides not only its own switching, but also its own loop to the end user premises – such as a cable company or other full facilities-based CLEC – to move the end user's service to the CLEC's switch without requiring the end user to change its number. It addressed the provision of LNP in connection with the hot cut of an existing Verizon NJ end user's loop from Verizon NJ service to CLEC service as a UNE loop in addressing Checklist Item 4.

500 Ibid. at ¶381.

501 Id. at ¶¶381-382.

M. Checklist Item 12 -- Dialing Parity

1. Description of the Checklist Item

Section 271 (c)(2)(B)(xii) of the Act requires Verizon NJ to provide "[n]ondiscriminatory access to such services or information as are necessary to allow the requesting carriers to implement local dialing parity in accordance with the requirements of Section 251(b)(3)" of the Act.[502] "Dialing parity" is defined by Section 3 (a)(39) of the Act to mean that a CLEC "that is not an affiliate of a local exchange carrier is able to provide telecommunications services in such a manner that customers have the ability to route automatically, without the use of any access code, their telecommunications to the telecommunications services provider of the customer's designation from among 2 or more telecommunications services providers (including such local exchange carrier).[503]

2. Standard of Review

With regard to local dialing parity, Section 251(b)(3) of the Act requires Verizon NJ "to provide dialing parity to competing providers of telephone exchange service and . . . to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays."[504] The FCC's rules implementing Section 251(b)(3), requires that customers of competing carriers must be able to dial the same number of digits that BOCs customers dial to complete a local telephone call.[505] Customers of competing carriers also must not otherwise suffer inferior quality service, such as unreasonable dialing delays, compared to the BOC's customers.[506]

3. Summary of Evidence before the Board

a. Verizon NJ

Verizon NJ stated that it provides local dialing parity to CLECs that purchase unbundled local switching from Verizon NJ or resell Verizon NJ's retail service.[507] It also states that it provides the information and service necessary for CLECs with their own switches to implement local dialing parity.[508] According to Verizon NJ, local dialing parity provided by it ensures that a CLEC's local service customers are not required to dial more digits than a Verizon NJ end user to complete a similar call, unless such requirement is imposed by a CLEC.[509] Further, Verizon NJ stated that it does not cause a CLEC's local service customers to experience post-dialing delay, call completion rate or transmission quality that is inferior to that experienced by its own end users.[510]

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502 47 U.S.C. §271 (c)(2)(B)(xii).

503 47 U.S.C. §153(15).

504 47 U.S.C. §251(b)(3).

505 47 C.F.R. §§51.205, 51.207; Pennsylvania 271 Order, Appendix C at ¶65.

506 Verizon Pennsylvania 271 Order, Appendix C, at ¶65.

507 Checklist Declaration at ¶ 384.

508 Ibid.

509 Id. at ¶ 385.

510 Ibid.

Verizon NJ stated that it provides local dialing parity at no additional charge, as an inherent component of its network interconnection arrangements with competitive carriers pursuant to interconnection agreements and at no additional charge to CLECs that resell Verizon NJ's retail service.[511] Verizon NJ stated that it had exchanged over 11 billion minutes of traffic with CLECs over local interconnection trunks from January through June 2001 and that[512] all of the local calls handled under these arrangements were completed with local dialing parity.

b. Other Parties' Positions

No party challenged Verizon NJ's compliance with Checklist Item 12.

4. Conclusion

Based on the record, the Board FINDS that Verizon NJ is in compliance with Checklist Item 12.

N. Checklist Item 13 – Reciprocal Compensation

1. Description of the Checklist Item

Section 271 (c)(2)(B)(xiii) of the Act requires Verizon NJ to offer access and interconnection that includes reciprocal compensation arrangements in accordance with Section 252(d)(2). Reciprocal compensation arrangements are agreements between interconnecting carriers regarding the charges that each carrier will apply for the transport and termination of certain telecommunications traffic of the other carrier.[513] Section 252(d)(2) requires reciprocal compensation arrangements that provide for mutual and reciprocal recovery of costs associated with the transport and termination on one carrier's network of calls that originate on the network of the other carrier.

2. Standard of Review

The FCC has concluded that Checklist Item 13 has been met if a BOC shows that: (1) it has reciprocal compensation arrangements in place in accordance with section 252(d)(2) of TA-96, and (2) it is making timely reciprocal compensation payments. [514]

The FCC has held that traffic bound for the Internet, and other types of traffic excluded by Section 251(g), are not subject to reciprocal compensation provisions of the Act.[515] In the Pennsylvania 271 Order, the FCC again stated its conclusion that whether a carrier pays reciprocal compensation on Internet-bound traffic "is irrelevant to checklist item 13."[516] The FCC rejected assertions regarding payment of reciprocal compensation on Internet-bound

511 Id. at ¶387.

512 Id. at ¶388.

513 See First Report and Order, at ¶ ¶ 1033-1045.

514 Verizon MA 271Order at ¶ 214; SWBT KS/OK 271 Order at ¶ 249; SWBT TX 271 Order at ¶ 379; BA NY 271 Order at ¶ 376.

515 See Order on Remand and Report and Order, I/M/O Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic; (CC Docket Nos. 96-98 and 99-68, FCC 01-131, (April 27, 2001) at ¶ 45-46 ("Reciprocal Compensation Order"). With the exception of provisions limiting the ability of CLECs to invoke opt-in provisions of Section 252(i), provisions of the Reciprocal Compensation Order April 27, 2001 became effective on June 14, 2001. Reciprocal Compensation Order ¶ 112.

516 Pennsylvania 271Order, at ¶119.

traffic by parties opposing Verizon's entry into the long distance market in Pennsylvania.[517] In addition, the FCC rejected attempts by opposing parties to use the 271 process to supplant the process of negotiation and arbitration established in Section 252.[518] And, the FCC has also declined to utilize the 271 process as a means to resolve factual disputes between carriers.[519]

3. Summary of the Evidence Before the Board

a. Verizon NJ

Verizon NJ stated it has complied with Checklist item 13.[520] Verizon NJ asserted that it offers reciprocal compensation arrangements to CLECs pursuant to interconnection agreements in accordance with applicable law.[521] As of June 30, 2001, Verizon NJ stated that it was paying reciprocal compensation to 14 CLECs, 6 broadband CMRS providers, and 9 paging companies.[522]

Verizon NJ indicated that it has complied with all rulings of this Board that have addressed the reciprocal compensation terms of interconnection agreements.[523] In addition, Verizon NJ declares that it has implemented provisions of the FCC's Reciprocal Compensation Order. To the extent that Verizon NJ is exchanging Internet-bound traffic and traffic properly subject to reciprocal compensation under the Act, Verizon NJ stated that it will apply the presumption that any such traffic that exceeds a 3:1 ratio of terminating to originating is Internet-bound traffic.[524]

Prior to the effective date of the Reciprocal Compensation Order on June 14, 2001, Verizon NJ argued that it applied a 2:1 ratio to implement the Board's holding that Internet-bound traffic is not subject to reciprocal compensation.[525] Using the 2:1 ratio, Verizon NJ said it paid reciprocal compensation on minutes of traffic, up to twice the number of minutes of traffic it received. Traffic exceeding the 2:1 ratio was presumed to be Internet-bound traffic. According to Verizon NJ, CLECs could rebut the presumption by demonstrating that traffic exceeding the 2:1 ratio was not Internet-bound. Verizon NJ testified that the presumption was necessary to implement the Board's decision because Verizon NJ is unable to identify Internet-bound traffic for billing purposes. A CLEC, according to Verizon NJ, however, is able to determine whether the traffic it is handing off to its customer is Internet-bound.[526]

b. AT&T

AT&T disputed Verizon NJ's assertion that it has complied with checklist item 13.[527] AT&T asserted that Verizon NJ has failed to make reciprocal compensation payments required under its interconnection agreement.[528] AT&T cited the Board's Generic Order, in which the Board

517 Ibid.

518 Id. at ¶118.

519 Id. at ¶101.

520 Checklist Declaration at ¶391.

521 Ibid.

522 Id. at ¶392.

523 Id. at¶391.

524 Id. at ¶391.

525 Verizon NJ Reply Checklist Declaration at ¶73.

526 November 7, 2001 Hearing Transcript at 439.

527 AT&T Initial Brief at 52-58.

528 Id at 52-53.

held that ISP-bound traffic was local traffic and thus subject to reciprocal compensation.[529] AT&T also stated that this was the understanding of the parties at the time that Verizon NJ and AT&T signed their interconnection agreement.[530] According to AT&T, the FCC's Reciprocal Compensation Order does not alter existing contractual arrangements or preempt prior state commission decisions.[531] AT&T also objects to application by Verizon NJ of a 2:1 ratio prior to the issuance by the FCC of the Reciprocal Compensation Order.[532] AT&T asserted that Verizon NJ has improperly withheld reciprocal compensation payments owed to carriers.[533] AT&T contended that Verizon NJ has not met this Checklist Item because it has not presented evidence showing that this checklist item "has been met since 1997."[534] Finally, AT&T observed that Verizon NJ's past compliance with checklist item 13 is an issue pending before the Board, and both AT&T and WorldCom "have filed petitions with the Board in connection with VNJ's failure to make full and complete reciprocal compensation payments pursuant to Board-approved interconnection agreements.[535]. AT&T accordingly asserted that Verizon NJ has failed to satisfy this checklist item.

c. Cablevision Lightpath

Lightpath contended that Verizon NJ fails to meet this checklist item because it has refused to pay the tandem reciprocal compensation rate for certain traffic.[536] According to Lightpath, the law clearly obligates Verizon NJ to pay the tandem rate for such traffic because Lightpath has demonstrated that Lightpath's switch serves the same geographic area as three Verizon tandem switches combined.[537]

d. WorldCom

According to WorldCom, Verizon NJ failed to meet this checklist item because it has violated the terms of the parties' interconnection agreement by applying the presumptions of the 3:1 ratio established in the Reciprocal Compensation Order, and the 2:1 ratio prior to the effective date of the Order on Remand.[538] In addition, WorldCom asserted there was no basis in any Board or FCC order for application of the 2:1 ratio.[539]

e. XO

XO stated that Verizon NJ fails to meet this checklist requirement because it has applied the 2:1 ratio and the 3:1 ratio unilaterally, and without negotiating an amendment to the parties' interconnection agreement.[540] According to XO, there has been "no determination factual or legal determination that the usage at issue is Internet traffic, except for Verizon's own unilateral

529 Id. at 51-52.

530 Id. at 52-53.

531 Id. at 53..

532. Id. at 54.

533. Ibid.

534 Ibid.

535 Id. at 54-55

536 Lightpath Initial Brief at 16-17.

537 Id. at 17.

538 WorldCom Initial Brief at 29-30.

539 Id. at 29.

540 XO Initial Brief at 4-10.

decision to label it Internet traffic."[541] XO stated that this is simply a tactic to avoid paying monies owed to CLECs, including XO, and is a violation of Checklist Item 13.[542]

4. Discussion

Based on the FCC precedents cited above, there is no merit to the parties' claims that Verizon NJ has failed to meet the requirements of Checklist Item 13. First, the FCC has held that whether a BOC pays reciprocal compensation on Internet-bound traffic is "irrelevant to checklist item 13".[543] Second, the FCC has not permitted parties to use the 271 process to supplant the process of negotiation and arbitration established in Section 252 of TA-96. Finally, the FCC has declined to use the 271 process to resolve fact-specific disputes between carriers concerning a BOC's obligations, stating: "[T]he section 271 process simply could not function if we were required to resolve every interpretive dispute between a BOC and each competitive LEC about the precise content of the BOC's obligation to its competitors."[544]

AT&T and WorldCom make essentially the same claim -- that Verizon NJ has failed to comply with statutory and contractual obligations to pay reciprocal compensation on Internet-bound traffic. Claims by AT&T and WorldCom that they are entitled under their interconnection agreements to reciprocal compensation for Internet-bound traffic are already the subject of pending complaint proceedings.[545] Their pending complaints arising under the specific provisions of their respective interconnection agreements will be resolved by the Board in due course, and we interpret previous FCC determinations on this subject that it is neither appropriate nor necessary to resolve them in this proceeding. Any additional claims regarding this issue should be pursued as provided in their interconnection agreements and Section 252.

Although payment of reciprocal compensation on Internet-bound traffic appears to be the issue addressed in XO's testimony and brief,[546] XO asserts Internet-bound traffic is not at issue. XO has nevertheless failed to show that Verizon NJ has not met this Checklist Item. Billing disputes arise in the ordinary course of business, and are not a bar to authority to provide competitive long distance service pursuant to Section 271. The billing dispute between XO and Verizon NJ concerning application of the 2:1 ratio should be resolved pursuant to the dispute resolution provisions in the parties' interconnection agreement or Section 252. XO's claims that Verizon NJ has failed to comply with provisions of the parties' agreement in implementing the FCC's Reciprocal Compensation Order should be resolved in the same manner.

It is likewise unnecessary and inappropriate to consider Lightpath's claim. This claim was the subject of an arbitration proceeding, which has recently concluded.

5. Conclusion

For the reasons stated above, based on the FCC precedents, the Board FINDS that Verizon NJ complies with this checklist item.

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541 Id. at 5.

542 Id .at 6.

543 Pennsylvania 271Order at ¶119.

544 Id. at. 101.

545 AT&T Communications of New Jersey, Inc., and TC Systems, Inc., and TCG Delaware Valley, Inc. v. Bell Atlantic-New Jersey, Inc., Docket No. TC99110838 (filed November 30, 1999); WorldCom Technologies, Inc., as successor in interest to MFS Intelenet of New Jersey Inc. and MCIMetro Access Transmission Services, LLC. v. Bell Atlantic-New Jersey, Inc., Docket No. TC9090669, filed August 31, 1999.

546 XO Initial Brief at 5-10; Verified Statement of Craig Plue on behalf of XO New Jersey, Inc.,¶¶ 12-16.

O. Checklist Item 14 -- Resale

1. Description of Checklist Item

Section 271(c)(2)(B)(xiv) of TA-96 requires a LEC to make "telecommunications services…available for resale in accordance with the requirements of Sections 251(c)(4) and 252(d)(3)."[547] Section 251(c)(4) of TA-96 imposes on LECs the duty to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers" and prohibits LECs from imposing unreasonable or discriminatory conditions or limitations on service resold. However, "a State commission may, consistent with regulations prescribed by the Commission … prohibit a reseller that obtains at wholesale rates a telecommunication service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers." Section 252.(d)(3) sets forth requirements for the determination of wholesale rates by state commissions. [548]47 U.S.C. § 251(c)(4).

A LEC must also demonstrate that it provides nondiscriminatory access to OSS for the resale of its retail telecommunications services.[549] Specific issues pertaining to Verizon NJ's OSS performance under the standards established in New Jersey's C2C Guidelines for the provisioning of resold UNEs and services are addressed in sections of this Consultative Report specifically addressing UNEs and in the section devoted to OSS. Timely and accurate billing also is an important aspect of the competitive marketplace for resold services. This also is addressed in the OSS segment of this Consultative Report.

2. Standard of Review

The FCC requires a BOC to commit in its interconnection agreement and tariffs to make its retail services available to competing carriers at wholesale rates without unreasonable or discriminatory conditions or limitations.[550]

3. Summary of the Evidence Before the Board

a. Verizon NJ

Verizon NJ asserted that it has complied with Checklist Item 14.[551] Verizon NJ stated that it offers for resale, at wholesale rates established by the Board, all telecommunications services it provides at retail to subscribers who are not telecommunications carriers.[552] Verizon NJ stated that it makes its resale services available pursuant to interconnection agreements and Verizon NJ's Tariff B.P.U. – N.J.-No. 2 Exchange Network Services, Section A2.2.5 Resale and Sharing.[553] According to Verizon NJ, the wholesale rates Verizon NJ charges subscribers are Verizon NJ's retail rates minus the Board-determined wholesale avoided cost discount. Verizon NJ stated that it gives resellers wholesale discounts from retail rates of 20.30% if the

547 47 U.S.C. § 251(c)(4)(A and B).

548 47 U.S.C. § 271(c)(2)(B)(xiv).

549 47 U.S.C. § 271(c)(2)(B)(xiv) Verizon Pennsylvania Order, Appendix C at ¶ 67.

550 Verizon Pennsylvania Order, Appendix C at ¶67.

551 Checklist Declaration at ¶394.

552 Ibid.

553 Id,. at ¶ 395.

reseller provides its own operator services and 17.04% if Verizon NJ provides operator services for the reseller.[554] It stated that the standard discounts Verizon NJ provides from retail rates were established by the Board's Generic Order. Resale discount rates are also contained in interconnection agreements, according to Verizon NJ.[555]

Verizon NJ stated that it provides reseller support with automated access to its OSS for pre-ordering and ordering activities for resold services.[556] According to Verizon NJ, its Repair Trouble Administration System provides resellers with the ability to test resold lines for trouble, submit trouble reports to Verizon NJ, check status, trouble history and close out trouble reports.[557] Verizon NJ stated that it also provides formal training to resellers to help them understand and sell its services and has an Account Management group responsible for coordinating all aspects of the reseller's business dealings with Verizon NJ.[558]

According to the company, the only restrictions Verizon NJ places on the resale of its services are expressly authorized by applicable rules of the FCC and the Board.[559] It noted that a general class-of-service restriction is contained in the Board's Generic Order.[560]

Verizon NJ stated that its provisioning and maintenance/repair performance for resale is at parity with, or exceeds, the standards for retail.[561] The following PMO metrics were referenced by Verizon NJ, relative to this representation: (1) PR-1-01; PR-2-01; PR-2-03; PR-4-02; PR-4-04; PR4-05; PR-6-01; PR-6-02; MR-2-02; MR-2-03; MR-3-01; MR-3-02; MR-4-01; MR-4-02; MR-4-03; MR-4-07; MR-4-08; MR-5-01.

b. Other Parties' Comments

No parties commented on Verizon NJ's resale offering.

4. Discussion

a. Resale Obligations

Verizon NJ has committed to making its retail services available to CLECs at wholesale rates through interconnection agreements and tariffs filed in compliance with our determinations in the Generic Order. Verizon NJ is further bound by the Board's December 17, 2001 Summary Order in the UNE proceeding.[562] There are no adverse comments, and we find no evidence, that Verizon NJ does not provide for the wholesale discount to all retail services.

554 Id. at ¶ 400.

555 Ibid.

556 Id. at ¶ 402.

557 Ibid.

558 Id., ¶¶ 403, 405.

559 Id. ¶ 407.

560 Id. at ¶408.

561 Id. at ¶ 412-423.

562 The wholesale discounts approved in Generic Order were not changed in the Summary Order.

b. Metrics

Verizon NJ's compliance with Checklist Item 14 is demonstrated by the performance results shown on the Carrier-to-Carrier reports.

6. Conclusion

Having considered the evidence in the record, the Board FINDS that Verizon NJ has met the requirements of Checklist Item 14.

Metrics and Performance Incentive Plan

1. Description

At its May 25, 2000 agenda meeting, the Board adopted the New Jersey Carrier-to-Carrier Guidelines Performance Standards and Reports ("Guidelines"), which provide a comprehensive set of performance measurements, standards and reports applicable to wholesale service provided by Verizon NJ.[563] The performance measures in the Guidelines cover the areas of Pre-Ordering; Ordering; Provisioning; Maintenance and Repair; Network Performance; Billing; Operator Services and Databases; and General, which includes directory listing verification reports, poles, ducts, conduits and rights-of-way. Performance standards have been set for many of these measurements. For some metrics, wholesale performance is compared to the service Verizon NJ provides to its retail customers to determine whether service is provided "at parity." For other metrics, the Board has established a benchmark standard. Verizon NJ is required to provide its wholesale performance results to the Board and the CLECs on a monthly basis in Carrier-to-Carrier reports ("C2C reports"). At its October 12, 2001 agenda meeting, the Board modified the metrics with the addition of several advanced services metrics, which were the result of a collaborative agreement between Verizon NJ and the CLEC community.[564]

At its October 12, 2001 agenda meeting, the Board also adopted an Incentive Plan ("IP"), which provides for self-executing remedies in the form of bill credits and payments for failures to meet the performance standards established by the Board. "[565] The amount of credits and payments due under the IP increases with the severity and duration of a failure to meet performance standards, and the number of CLECs impacted. There is no cap on Verizon NJ's liability under the IP.

563 In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631, and In the Matter of the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket No. TX98010010, Order, dated July 13, 2000 ("Guidelines Order"). The Guidelines subsequently were modified by Order Approving Revised Guidelines ("Guidelines Modification Order"), dated November 27, 2001.

564 Ibid.

565 In the Matter of the Investigation Regarding Local Exchange Competition for Telecommunications Services, Docket No. TX95120631, and In the Matter of the Board's Investigation Regarding the Status of Local Exchange Competition in New Jersey, Docket No. TX98010010, Order, dated July 13, 2000 ("Order Approving Incentive Plan"). The Guidelines subsequently were modified by Order Approving Revised Guidelines ("Order Approving Incentive Plan"), dated November 27, 2001.

The IP uses one or the other of two methods for calculating incentive credits when Verizon NJ's performance does not meet the applicable Guidelines standards. For most measures, incentive credits are computed on a "per unit" basis, which provides for credits to each CLEC that received sub-standard service, in an amount based on the volume of sub-standard service transactions for each affected CLEC. For a few measures, when assessing credits on a "per unit" basis is not feasible, if Verizon NJ's performance does not meet the applicable standard, a pre-established total dollar amount is allocated among affected CLECs.

Both the "per unit" and the "per measure" incentive credits increase as the degree of severity by which a standard is missed increases. An amount of $35 applies for a minor performance violation; $75 for a moderate performance violation; and $150 applies for a major performance violation. In addition, both the "per measure" and the "per unit" incentive credits increase with the duration of a performance failure. For a measure which misses the standard for two consecutive months, the incentive credit will be two times the amount that would be due if the standard had been missed for only one month. The incentive credit for a performance failure for three consecutive months will be three times the amount that would be due if the standard had been missed for only one month ("3x multiple"). In the event that misses continue for four or more consecutive months, the incentive credit will be five times the amount that would be due if the standard had been missed for only one month for that month and each month thereafter. In addition, if performance for any three months in a six-month period is substandard the incentive credit will be at the 3x multiple. If this situations occurs, Verizon NJ must provide performance at an acceptable level for three consecutive months prior to reverting to the lower multiplier.

2. Standard of Review Relative to Metrics

The FCC has stated that "it uses performance measurements as valuable evidence with which to inform the judgment as to whether a BOC has complied with the checklist requirements."[566] In addition, performance reports "allow [the FCC] to review, on an on-going basis, Verizon's performance to ensure continued compliance with the statutory requirements."[567] When it considered performance metrics in ruling upon Verizon's application for 271 authority in New York, the FCC considered whether the metrics stated clearly-articulated definitions or "business rules," which set forth the manner in which data are to be collected, any relevant exclusions, and applicable performance standards. The FCC found that the clarity provided in the New York metrics helped to ensure that the reporting mechanism provides "a benchmark against which new entrants and regulators can measure performance over time to detect and correct any degradation of service rendered to new entrants."[568] The FCC also considered the scope of performance covered by the New York metrics and concluded that the Guidelines were sufficiently comprehensive.[569] The FCC examined the New York metrics and determined that, together with the New York remedies, they fell within "a zone of reasonableness" sufficient to foster compliance after the granting of 271 authority.[570]

566 Verizon Pennsylvania 271 Order, Appendix C at ¶10.

567 Verizon Pennsylvania 271 Order at ¶138.

568 See BA NY 271 Order at ¶ 438.

569 Ibid. at ¶ 439.

570 Ibid. at ¶ 433.

In the New York 271 Order, the FCC noted that metrics need not be static and can be modified over time in response to competitive concerns.[571] When commenters in New York raised concerns about the details of specific metrics, the FCC noted that the New York Public Service Commission had provided a forum for ongoing modification and improvement of the metrics. The FCC has cited the importance of the evolution and refinement of performance metrics to reflect changes in the telecommunications industry and the local market.[572]

The FCC has explained that "parity and benchmark standards established by state commissions do not represent absolute maximum or minimum levels of performance necessary to satisfy the competitive checklist."[573] Rather, they are "informed and reliable attempts to objectively approximate whether competing carriers are being served by the incumbent in substantially the same time and manner, or in a way that provides them a meaningful opportunity to compete."[574]

3. Summary of the Evidence Before the Board Relative to Metrics

a. Verizon NJ

Verizon NJ asserted that the Guidelines state the business rules, formulas, and processes that Verizon NJ uses each month to measure the quality of its wholesale performance.[575] It further stated that the Guidelines also set performance standards, where they have been adopted by the Board.[576] Verizon NJ also noted that the Guidelines describe the methodologies, including the statistical methodologies, Verizon NJ will use each month to determine whether its performance has met the applicable standard.[577]

Verizon NJ asserted that its performance metrics measure every aspect of the fourteen-point checklist. The Guidelines consist of a total of 49 metrics, which include 205 submetrics. The 205 submetrics are further disaggregated by geographic region, product type, and various combinations thereof. As a result, Verizon NJ stated that it measured and reported performance for more than 2,200 disaggregated submetrics each month. Approximately 11,500 data points are provided in a single monthly CLEC Aggregate Carrier-to-Carrier performance report, according to Verizon NJ. This does not include the additional data points reported on CLEC-specific reports for CLECs doing business in New Jersey.[578]

Verizon NJ stated that its entire metrics production and reporting process has been subjected to extensive third-party verification and review by the Board's independent consultant, KPMG Consulting, Inc. ("KPMG"). As part of its comprehensive review of Verizon NJ's OSS, KPMG evaluated the procedures and systems Verizon NJ has implemented to measure and report its performance for all measurement categories of the Guidelines. Verizon NJ satisfied each of 164 "test points" for validating the measurement portion of the KPMG review.[579]

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571 Ibid. at ¶ 438.

572 Ibid. at ¶ 438.

573 Verizon Pennsylvania 271 Order, Appendix C, ¶8.

574 Ibid.

575 Measurements Declaration on behalf of Verizon New Jersey Inc., dated September 5, 2001 ("Measurements Declaration"), Id. at ¶12.

576 Id. at ¶¶13-14.

577 Id. at ¶¶15-17.

578 Id. at ¶26; Transcript, November 5, 2001, p. 211 (DeVito); Transcript, November 5, 2001, pp. 211-212.

579 Measurements Declaration at ¶ 19.

After this extensive testing, Verizon NJ argues that KPMG concluded that Verizon NJ (1) has implemented satisfactory practices for documenting and distributing metrics standards and definitions, and distributing metrics reports[580]; (2) has implemented satisfactory policies and practices for collecting and storing wholesale and retail performance data used to calculate reported performance results;[581] (3) that Verizon NJ has implemented appropriate procedures for replicating and converting performance data into reportable results,[582] and (4) that Verizon NJ has consistent processes for developing, evaluating and implementing change controls, and an adequate notification process for metric changes and errors. [583]

In addition, KPMG was able to replicate each of the many hundreds of submetrics that Verizon NJ measures and reports monthly, with only one minor exception that has since been addressed by Verizon NJ and resolved.[584] Verizon NJ asserted that KPMG's successful replication of hundreds of data points shows that Verizon NJ's reports are accurate and reliable. At this time, no metrics are categorized as under review, and one remaining metric is still under development.[585] According to Verizon NJ, by comparison, 72 New York metrics and 11 Pennsylvania metrics were reported as under development when Verizon made its 271 filings in those states.[586] As of October, there were 14 outstanding change controls in New Jersey. According to Verizon NJ, this is comparable to the change control status in Pennsylvania, which had 20 change controls outstanding as of the September report month. Verizon NJ noted that change controls are not issued solely to correct errors, and errors that are addressed are not always material or results-affecting. None of the 14 change controls referred to above is expected by Verizon NJ to have a material impact on reported results.[587]

b. Other Parties' Positions

AT&T and WorldCom contended that Verizon NJ fails to make accurate and timely performance reports.[588] According to AT&T, the Board and the CLECs have "no meaningful opportunity to validate Verizon NJ's performance data."[589] AT&T objects to Verizon NJ's "willingness to act unilaterally" with regard to metrics implementation and reporting.[590] Both AT&T and WorldCom criticize Verizon NJ for failure to refile corrected C2C reports.[591] According to WorldCom, "there have been no consequences from the Board for Verizon's failure to report on all metrics and to report them properly."[592]

580 Measurements Declaration at ¶ 20; KPGM Report, at 355-360 (PMR1).

581 Measurements Declaration at ¶ 21; KPMG Report, at. 361-384 (PMR2).

582 Measurements Declaration at ¶¶ 22-23; KPMG Report, at. 393-401 (PMR4).

583 Measurements Declaration at ¶ 24; KPMG Report, at 403-409 (PMR5).

584 For MR-4-04, % Cleared (all troubles) within 24 Hours, Verizon NJ reported 19,053 observations and KPMG calculated 12,494. Verizon NJ implemented a change control to correct the mapping for the metric denominator, and the change was reviewed and verified by KPMG. KPMG Report, at. 388-389 (PMR3); Measurement Declaration at ¶2.

585 Carrier to Carrier Performance Standards and Reports, September 2001, CLEC Aggregate Performance (Verizon NJ Exhibit 21); Reply Measurements Declaration on behalf of Verizon NJ inc. dated November 2, 2001, at 10. Transcript, November 5, 2001, at 157-159, 163-164.

586 Measurements Declaration at ¶28.

587 Reply Measurements Declaration, at ¶10; Transcript, November 5, 2001, at. 211; Transcript, November 7, 2001, at 350-353.

588AT&T Initial Brief at 48; WorldCom Initial Brief at 21.

589 AT&T Initial Brief at 49.

590 AT&T Initial Brief at 51.

591 AT&T Initial Brief at 48; WorldCom Initial Brief at 21-22.

592 Initial Brief of WorldCom at 27.

In addition to the foregoing claims, WorldCom cited KPMG's observation #80 as evidence that Verizon NJ's C2C reports are inaccurate.[593] WorldCom claimed that results for the metrics impacted by this observation were not restated and the results reported by Verizon NJ cannot be relied upon.[594] WorldCom also asserted that the Guidelines are inadequate because they do not include measures of Verizon NJ's performance in providing special access service.[595] Finally, WorldCom asserted that Verizon NJ provided contradictory testimony by "admitting" at the hearings that certain special studies were not underway, as had been stated in the Measurements Declaration.[596]

4. Discussion and Conclusion Relative to Metrics

The Board concludes that the Guidelines provide a comprehensive set of performance measures, standards and reports applicable to wholesale service provided by Verizon NJ. Together, these performance measures, standards and reports allow the Board and the CLECs to determine whether Verizon NJ is providing wholesale services as required by the TA-96. They will also allow the Board and the CLECs to monitor Verizon NJ's performance to verify that other carriers continue to receive service meeting applicable legal requirements after Verizon NJ has been authorized to provide competitive long distance service in New Jersey.

In the Guidelines Order, the Board observed that the Guidelines are comprised of a combination of the metrics then in effect in Pennsylvania, plus additional metrics included in the New York Guidelines and adopted in New York to address operational issues experienced there.[597] The Board notes that the FCC has granted Verizon authority to provide competitive long distance service in both of those states. The Board, therefore, concludes that the Guidelines meet the standards for review described above.

Verizon NJ has experienced certain problems in connection with implementation of the Guidelines, and, given Verizon's experience in other states, it is likely that implementation issues will continue to arise. However, that fact is not a bar to 271 authority, as demonstrated by Verizon NJ's evidence comparing change controls and Under Development metrics in New Jersey to those in other states where 271 authority has already been granted.

Verizon NJ has acted proactively to advise the Board, Board Staff and the CLECs of implementation issues as they have been discovered. The change control processes embodied in the Metrics Business Rules and a Metrics Change Control Notification Process were developed with input from KPMG and Staff, and KPMG has conducted a process review of them and was satisfied with the result.[598] The Board disagrees with the CLECs that the number of change controls notifications that have been issued impugns the accuracy and reliability of the C2C reports. To the contrary, they indicate Verizon NJ's necessary commitment to improvement where areas of concern arise.

KPMG's favorable report and successful replication show that implementation problems identified by Verizon NJ have been or are being resolved. Any remaining concerns of the

593 WorldCom Initial Brief at 22.

594 WorldCom Initial Brief at 22.

595 WorldCom Initial Brief at. 29-31.

596 WorldCom Initial Brief at 22-23.

597 Guidelines Order at 6-7.

598 KPMG Report at 403-409.

CLECs are addressed by the Incentive Plan, which contains provisions requiring payments to a state fund for C2C reports that are late, or inaccurate or incomplete.

The fact that line sharing metrics are to be included in C2C reports for the first time in the November data month, and that Verizon NJ's proposal to add line splitting metrics to the Guidelines is still pending, present no bar to Verizon NJ's entry into the long distance market.[599] Pending inclusion of the line sharing metrics, Verizon NJ has provided reports showing its xDSL line sharing performance.[600] Line splitting metrics will be implemented and reported for the first time in New York, Connecticut and Massachusetts for the November data month, and have not yet been adopted in Pennsylvania. Nevertheless, Verizon has been authorized to provide competitive long distance service in each of these states. The FCC and other states have recognized that Carrier to Carrier Guidelines are iterative documents, and that the process of adding, modifying or deleting metrics may continue after 271 authority has been granted. Indeed, any carrier proposing additions or revisions to the Guidelines may petition the Board to do so.

The Board further finds that there is no merit to WorldCom's additional claims. KPMG's testimony showed that Verizon NJ resolved the problem underlying observation 80 to the satisfaction of KPMG.[601] Special access services differ from the wholesale products included in the Guidelines because they are not products offered to the CLECs for the purpose of providing local service. Therefore, we decline to add them to the Guidelines at this time.[602] Finally, Verizon NJ has provided consistent evidence showing that the special study referred to in paragraph 86 of the Measurements Declaration is underway.[603]

With the additions and modifications set forth above as to electronic billing, the Board FINDS that the Guidelines and C2C reporting by Verizon NJ support a favorable report on Verizon NJ's application to provide competitive long distance service in New Jersey.

5. Standard of Review Relative to Remedies

The FCC has stated that, although a performance incentive plan is not a requirement for 271 authority, "the existence of a satisfactory performance monitoring and enforcement mechanism would be probative evidence that the BOC will continue to meet its section 271 obligations after a grant of such authority."[604] The FCC has articulated five "key elements" that it examines to determine whether a performance incentive plan is sufficient to "foster post-entry checklist compliance."[605] First, the FCC will consider the total liability at risk under the plan. Second, the FCC will consider whether a plan has "clearly-articulated, predetermined measures and standards."[606] Third, the FCC will consider whether the plan is reasonably structured to detect

599 See Reply Measurements Declaration at ¶13; Verizon NJ Brief at 108-109.

600 See Measurements Declaration, Attachment 406.

601 Verizon NJ Reply Brief at 57-58, citing Transcript, November 16, 2001, pp. 1039-1040 (Sears); June performance report included in Measurements Declaration, Attachment 402, and July performance report included in Verizon NJ Exhibit 21.

602 See Proceeding to Investigate Methods to Improve and Maintain High Quality Special Services Performance by Verizon New York Inc., NY PSC Case 00-C-2051.

603 Verizon NJ Reply Brief at 65, citing Transcript, November 8, 2001, at 770-772 (DeVito and Nogay).

604 Verizon Pennsylvania Order at ¶ 127.

605 Id. at ¶129.

606 Id. at ¶ 128, n.442, and 129; BANY 271 Order at ¶¶ 435, 438-39.

and sanction poor performance.[607] Fourth, the FCC will consider whether the plan is "self-executing".[608] Finally, the FCC will consider whether performance measures are meaningful, accurate and replicable.[609]

6. Summary of the Evidence Before the Board Relative to Remedies

a. Verizon NJ

Verizon NJ claimed that the Incentive Plan adopted by the Board will prevent back-sliding after it receives authority to provide competitive long distance service in New Jersey, and it asserted that the IP meets the FCC's five criteria.[610]

Regarding total liability at risk under the plan, Verizon NJ observed that liability under the IP is unlimited, while by contrast, there are caps on liability in plans of other states where 271 authority has been granted. In addition, the "per unit" amounts of $35, $75 and $150 are equal to or more than the "per unit" amounts established in Texas, where 271 authority was granted.[611]

Regarding whether the IP has clearly-articulated, predetermined measures and standards, Verizon NJ asserted that, like the Guidelines of other states where 271 authority has been granted, the New Jersey Guidelines set forth clear and comprehensive measurements and performance standards.[612]

As to whether the IP is reasonably structured to detect and sanction poor performance, Verizon NJ pointed out that failure to meet a single IP metric will result in an amount due under the plan. The amount will increase with the severity and duration of the miss, and the volume of activity. The IP does not provide for aggregation of results, which could otherwise allow performance that meets standards to mask sub-standard performance.[613]

Verizon NJ asserted that the FCC criterion of a self-executing plan is also met by the IP. Under the IP, incentive amounts are automatically credited to CLECs' bills. If the amount of a credit exceeds the amount billed, the CLEC is paid the amount of the excess. The IP therefore satisfies this element according to Verizon NJ.[614]

Finally, regarding the fifth criterion of performance measures that are meaningful, accurate and replicable, Verizon NJ pointed out that the Guidelines are comprehensive measures of Verizon NJ's performance, and that Verizon NJ accurately reports performance results, as evidenced by KPMG's successful replication. In addition, according to Verizon NJ, provisions in the IP for annual audits lay to rest any doubt that this key element has been met.[615]

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607 Id. at ¶ 128, n.442, and 129.

608 Id. at ¶ 128, n.442, and 129.

609 Verizon Pennsylvania Order at ¶¶128, n.442, and 129; BANY 271 Order at ¶ 442.

610 Verizon NJ Brief at 114-116.

611 Id. at 114-115.

612 Id. at 116.

613 Ibid.

614 Ibid.

615 Ibid.

Further, Verizon NJ stated that the FCC has not required a track record of IP performance to approve a 271 filing. Verizon NJ pointed out that in several Verizon states, the IP did not go into effect until long distance authority was granted by the FCC.[616]

b. Other Parties' Positions

The Ratepayer Advocate and AT&T contended that the absence of real world testing of penalties prevents the Board from developing a full record that is sought by the FCC in Section 271 proceedings.[617] Further, the Ratepayer Advocate and ASCENT assert that consumers and competitors have not been able to discern whether the IP adopted by the Board will ensure nondiscriminatory treatment by Verizon NJ.[618] The Ratepayer Advocate suggested that three months of compliance with the IP be demonstrated by Verizon NJ before the Board recommends approval of its 271 application.[619] WorldCom argued that until the accuracy and verifiability of Verizon NJ's performance reports is established, any system of performance remedies is fatally compromised.[620]

7. Discussion Relative to Remedies

The Board rejects parties' claims that it should not render a favorable report until the IP has been in effect for a particular period of time. In considering the IP, the Board has had the benefit of experience in other states, and the FCC's comments on the characteristics of plans that it concludes are appropriate to prevent backsliding after authority to provide competitive long distance service is granted. The FCC has not required an incentive plan "track record" for Section 271 relief. In New York, Massachusetts and Connecticut, the IP did not go into effect until long distance entry had been authorized, and long distance authority was granted in Pennsylvania while significant changes to the performance incentive plan were under consideration in that state.

The Board concludes that payments under the IP are sufficient to prevent back-sliding. Unlike other states' incentive plans, there is no cap on liability under the IP. AT&T argued that payments under the New York plan have not reached the cap established there, so the fact that there is no cap in New Jersey is insignificant. AT&T's argument is not persuasive. It is the amount *at risk* under a plan that is considered by the FCC, not the amount actually paid. The FCC has granted 271 authority in states where liability was capped at 36% of a BOC's revenues from local service (total operating revenue less operating expenses and operating taxes), concluding that the amount at risk was a substantial percentage of the BOC's profits.[621] Moreover, as Verizon NJ pointed out, the "per unit" incentive amounts under the IP are equal to or greater than amounts established in Texas, where long distance authority has been granted.

8. Conclusion Relative to Metrics and Remedies

The Board FINDS that the evidence shows comprehensive measurements, accurate performance reporting and an IP that will prevent backsliding, all of which support a favorable

616 Id. at 117.

617 Ratepayer Advocate, Initial Brief at 28; AT&T Initial Brief at 36.

618 Ratepayer Advocate Initial Brief at 28; Reply comments of ASCENT dated December 14, 2001.

619 Ratepayer Advocate Initial Brief at 28.

620 WorldCom Initial Brief at 27.

621 See, e.g., BA NY 271 Order at ¶ 436.

report from the Board on Verizon NJ's application to provide competitive long distance service in New Jersey.

Public Interest

Parties to the proceeding differ as to the role and responsibilities of the Board in considering public interest issues in its evaluation of Verizon NJ's application. A central issue is whether Verizon NJ, in addition to demonstrating its compliance with the 14 –point checklist, must also demonstrate to the Board, that granting its application is in the public interest.

Positions of the Parties

Verizon NJ's Position

Verizon NJ contended that some parties, who were unable to present evidence that Verizon NJ has failed to comply with the competitive checklist, have advocated that this Board use the "public interest" as a basis to impose restrictions and obligations on Verizon NJ. However, TA-96's public interest standard, which is set out in Section 271(d)(3)(C),[622] calls upon the FCC to determine whether interLATA entry "is consistent with the public interest, convenience, and necessity." Verizon NJ noted that this charge is not directed to state commissions, who are instead asked "to verify the compliance of the Bell operating company with the requirements of subsection (c) [of section 271]" and argued that there is thus no need for this Board to undertake a public interest analysis. Verizon NJ further contended that even if the Board were to undertake a public interest analysis the scope of such a public interest analysis is limited: The Act itself expressly prohibits any public interest inquiry to add local competition requirements beyond those set out by Congress in the competitive checklist. Verizon NJ asserted that in any event, Verizon NJ's entry into the long distance market is in the public interest, and noted that the FCC has repeatedly found that "BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist."[623]

Ratepayer Advocate's Position

The Ratepayer Advocate stated that one of the four criteria that Verizon NJ must satisfy in order to receive Section 271 authority is the public interest test. See 47 U.S.C. § 271(d)(3). The Advocate argued that the FCC has consistently and repeatedly stated in its Section 271 orders that the public interest test is fully independent of the fourteen (14) point checklist and the other Section 271 criteria, but equally necessary to Section 271 analysis in compliance with the 1996 Act. The Ratepayer Advocate further argued that the FCC has specifically requested that state commissions identify any factor they deem relevant to the public interest determination.[624]

The Ratepayer Advocate asserted that the public interest review must include an analysis of whether competition currently exists and will continue to exist in the local market before entry into the long distance market is granted. This evaluation also should analyze the actual amount of competitive services being provided "to different classes of customers (residential and

622 47 U.S.C. §271(d)(3)(c).

623 Verizon NJ Reply Brief at 72-74, 76.

624 Ratepayer Advocate Initial Brief at 17-18.

business)," and the scope of competition "in different geographic regions (urban, suburban, and rural)."[625]

The Ratepayer Advocate further contended that an analysis of the state of local competition in New Jersey is essential and that failure to include such an examination would fatally undermine the Board's public interest analysis. This in turn, would render the Board unable to conclude that Verizon NJ satisfied Section 271 (d)(3) of the 1996 Act, one of the four distinct, mandatory Section 271 criteria.[626]

AT&T's Position

AT&T stated that, in addition to its responsibilities pursuant to Section 271, the Board has an ongoing responsibility to protect the public interest. It cited to the New Jersey Supreme Court's statement that, " the public interest is an added dimension in every administrative proceeding. That interest is necessarily implicated in agency adjudications, and, in a sense, the public is an omnipresent party in all administrative actions." Hackensack v Winner, 82 N.J. 1, 58 (1980). AT&T also noted that the Board has recognized the public interest as a critical factor in its determinations regarding the regulation of the ILEC VNJ pursuant to the legislative directives of Title 48 and New Jersey's Telecommunications Act, N.J.S.A.48:2-21.16 et seq. Thus, Verizon NJ's contention that the public interest is irrelevant is simply wrong according to AT&T. [627]

WorldCom's Position

WorldCom stated that the "benefits" of Verizon's long distance entry are either speculative or exaggerated. Whether Verizon spurs price competition in the New Jersey long distance market remains to be seen. Whether Verizon's entry into long distance spurs local competition by IXCs is an exceedingly complicated analysis that depends on whether the loss expected from adding local services is greater than or less than the profit the IXC makes from an existing customer. It is not so definitive as Verizon would suggest.[628]

NJCTA Position

The NJCTA stated that, while VNJ's motion to strike all references to the "public interest" is still pending, New Jersey law is clear on the subject. It contended that, Verizon NJ itself recognized this when it asserted in its petition in Docket No TO97030166 that, "in addition to other relevant evidence which BA-NJ has submitted…this Petition… shows that Bell Atlantic's request to provide long distance service within New Jersey is consistent with the public interest and will benefit the consumers and economy of New Jersey." The NJCTA noted that the Docket No. TO97030166 petition was supported by the affidavits of a number of witnesses who likewise make the public interest assertions as a matter of fact: Len J. Lauer, then president and chief executive officer of BA-NJ asserted that "the Board should conclude that it is in the public interest for BACI [the affiliated company that was contemplated to actually provide long distance service in New Jersey] to provide long distance service in New Jersey."

625 Id. at 19.

626 Id. at 20.

627 AT&T Initial Brief at 2,16.

628 WorldCom Initial Brief at 31.

The NJCTA further contended that the Board is required under New Jersey law to consider public interest issues in all proceedings it conducts, and that the law is unambiguous on this point. That interest is necessarily implicated in agency adjudications, and, in a sense, the public is an omnipresent party in all administrative actions.[629]

XO's Position

XO stated that it supports the Ratepayer Advocate's call for a state universal service fund to meet the public interest test of Section 271. (Ex. RPA-10, ¶ 24).[630]

Cablevision Lightpath's Position

Cablevision Lightpath argued that Verizon NJ's claims that the absence of residential facilities-based competition is irrelevant to the determination of whether the New Jersey local market is fully and permanently open to competition are wrong. It contended that any such presumption would conflict with the plain language of the statute, which puts the burden on the applicant to show that its entry would be "consistent with the public interest." It maintained that the FCC has rejected the argument that the public interest test can be satisfied, by simply presuming that the benefits of additional entry into long distance outweigh competitive harms arising from premature authorization.[631]

Association of Communications Enterprises' Position

The Association of Communications Enterprises asserted that an evaluation of Verizon NJ's compliance with all market opening obligations including the establishment of a performance assurance plan and level of competition falls squarely in the realm of the public interest and are issues now before the Commission. The Association argued that to suggest that the FCC will make a public interest determination in a vacuum without looking to the Board for guidance is disingenuous and a self-serving attempt to narrow the Board's role according to the Association, if the Board is to make a meaningful and complete assessment of Verizon NJ's full Section 271 compliance, it must do so with respect to the entirety of Verizon NJ's compliance, including a public interest assessment.[632]

Board Findings on Public Interest

The Board does agree that a review of the public interest is appropriate. The Board does not agree, however, with the parties who argue that Verizon's entry into long distance market should be denied or delayed at this time because of the low level of residential market share of CLECs. The Board has removed any real or perceived barrier to entry to this market through it various decisions and orders as articulated herein. Verizon does meet the standards set forth in the Act and the further requirements of the FCC. Neither the Congress nor the FCC has ever set any minimum market share percentage or an absolute number of CLEC residential customer lines requirements for BOC long distance entry. The fact is, competitors are here, and they are providing service. While less than we had hoped for, most importantly, they can expand into the residential market, if they choose to do so.

629 NJCTA Initial Brief at 6.

630 XO Initial Brief at 25.

631 Cablevision on Lightpath Brief at 9.

632 Association of Communications Enterprises Initial Brief at 10-13.

Therefore, based upon the record in this proceeding and the pro-competitive decisions made to this point, the Board FINDS that the public interest is best served at this time by allowing Verizon NJ into the long distance market, to create more competition, hopefully putting downward pressure on rates in all markets in New Jersey. Finally, the Board does not agree that additional safeguards are necessary as a prerequisite to Verizon long distance authority. Many of the proposed safeguards are unnecessary and at least two – access charge reductions and structural safeguards – are currently under consideration in the pending Verizon PAR II case.[633] Those issues will therefore be addressed in due course.

CONCLUSION

After a thorough and comprehensive investigation of Verizon NJ's claim that it is now in compliance with the statutory requirements enumerated in Section 271 (c) of the Telecommunications Act of 1996, based on the record developed in this proceeding, the Board FINDS that, with the addition of the conditions herein, Verizon NJ has demonstrated substantial and sufficient compliance to warrant a favorable 271 recommendation from the Board.

These findings are the culmination of efforts by parties to ensure strict and full compliance with each of the 14-point checklist items listed in Section 271 (c). The overall examination was based on the filings and testimony. Moreover, it has focused on every aspect of Verizon NJ's wholesale operations and service to CLECs. It incorporates the comprehensive review of Verizon NJ's OSS completed in August, 2001 by the third party evaluator, KPMG Consulting, acting under the direct supervision of the Board.

In the Board's judgment, with the conditions articulated herein, the New Jersey local telephone markets are fully and irreversibly open to competition. Therefore, the Board hereby VERIFIES that Verizon New Jersey Inc. has complied with Section 271(c) of the Telecommunications Act of 1996 and RECOMMENDS that the FCC approve Verizon NJ's Section 271 application to offer in-region, long distance telephone service in New Jersey.

DATED: 1/15/02

BOARD OF PUBLIC UTILITIES
BY:

Connie O. Hughes

CONNIE O. HUGHES
PRESIDENT

Frederick F. Butler

FREDERICK F. BUTLER
COMMISSIONER

633 I/M/O Application of Verizon New Jersey for Approval of a New Plan for an Alternative form of Regulation. Docket No.TO01020095.